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SUPPORTIVE COMMENTS ON THE 1987 CONSTITUTIONAL ACCORD

August 1988

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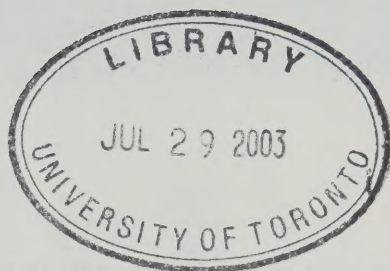


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SUPPORTIVE COMMENTS ON THE 1987 CONSTITUTIONAL ACCORD

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ADOPT THE ACCORD

TESTIMONY OF WITNESSES: PUBLIC HEARINGS

SPECIAL JOINT COMMITTEE OF THE HOUSE AND SENATE

Honourable Robert Stanfield

(Former Premier of Nova Scotia and former Leader of the Opposition)

- "Well, marvel of marvels, we have succeeded - or rather the First Ministers have succeeded. We should all be yelling hallelujah. We can now have a Constitution that carries the approval of all Canadians". (5:102)
- "Let me say quite frankly that I am ecstatic about this agreement. I am frankly and unashamedly ecstatic that we have achieved an agreement." (5:106)
- "Meech Lake has put Canada back on track. Meech Lake really constitutes a constitutional renewal. Let us keep it there." (5:103)

Honourable Gordon Robertson

(Former Secretary to the federal Cabinet)

- "I think we see in the Constitutional Accord of 1987 the result of 19 years of discussion and consideration. I think we would not have had this accord if it had been tried in 1971 or 1978 or even 1982. I think it took a long time to condition the thinking and it also took what Senator Murray referred to as a "window of opportunity" to achieve it." (3:90)
- "To sum it up, in my judgment the Constitutional Accord of 1987 meets the present priorities. It will produce a fair and reasonable arrangement. I do not think it will have any seriously adverse effects as far as federal governments of the future are concerned and I am dubious whether there is any significant or likely possibility of getting a better arrangement." (3:78-79)

Peter Leslie

(Director, Institute of Intergovernmental Relations, Queen's University)

- "Canada has a strong moral reason...to reach now a settlement with Quebec, given that there is a government in place committed to such an agreement and to taking its place on a morally equal basis with the other provinces." (4:97-98)

- "I consider it essential to end the moral exclusion of Quebec from the Constitution...That is then our strongest reason to look for an accord." (4:98)
- "It is a good framework for collaboration...The federal government has in my view retained its powers of action. It will be looking for co-operation, but it still has the powers needed to play hard ball with the provinces if it has to." (4:101)

William Lederman

(Professor Emeritus, Faculty of Law, Queen's University)

- "What happens if we do get the accord through as it is and this restores, as I say, the political legitimacy of the federal Constitution in Quebec? Everybody knows that in the technical, legal sense, it is in force in Quebec. But that is not good enough, particularly for a constitutional document. We always have to be renewing our beliefs in and our allegiance to our constitutional principles. A bare, technical legality is not good enough.
- Now, if we get Quebec's wholehearted collaboration in future constitutional changes, then we can start doing some very important things." (7:30)

Solange Chaput-Rolland

(Political commentator, Commissioner on Pepin-Robarts Task Force on Canadian Unity)

- "Prime Minister Mulroney promised a reconciliation between the provinces and his government, between Quebec and Ottawa, between separatism and federalism. He has kept his word; it has not been said enough: he has kept his word and demonstrated a very strong will to close the gap between Quebec and the rest of the country." (13:8)
- "One thing that is striking about the Meech Lake negotiations was the atmosphere of mutual trust which united all of the participants. It was a magical time, one that should linger in memory in a country that has hung together since 1867..." (13:9)

- "I have a feeling that in years to come the Accord will transform our communities with their regional differences into a wonderful national fraternity.
- The sun shone so brightly on Meech Lake that morning; I would not want to see night fall on this country we call Canada!" (13:11)

Honourable J.W. Pickersgill

(Former federal Cabinet Minister, Secretary to the PM and Secretary to the Cabinet)

- "Mr. Stanfield and I were together the night before the Meech Lake meeting, and we both said nothing will come of it. I am glad to say we were wrong; but it was a miracle. I think Mr. Stanfield used similar language." (10:124)
- "Insistence on amendments ... unless there is a typographical error or something of that sort, will almost certainly unravel that very delicate agreement.
- If Quebec is rebuffed, if this Accord becomes discord, and the opportunity is lost to get the acquiescence of the constitutional authorities in Quebec, my guess is...that it probably will not arise again for another generation, and never again on such reasonable terms.
- Most Canadians want creative cooperation. The acceptance of the Meech Lake Accord will make this possible ... I regard the Meech Lake Accord as the gate to greater unity and harmony in Canada, and let us not shut that gate." (10:126)

ONTARIO SELECT COMMITTEE ON CONSTITUTIONAL REFORM

Donald Stevenson

(Former Deputy Minister, Intergovernmental Affairs,
Present Ontario Representative to the Federal and
Quebec Governments)

- "It [the Accord] represents an integrated set of proposals which permit Quebec to play once again its full role within Confederation. It builds on the lengthy period of constitutional discussions which began in the late 1960s and recaptures the opportunity which was lost in 1982 to address the historical concerns of Quebec and its place in the Canadian Confederation." (February 2, 1988)
- "The Quebec government felt betrayed and disillusioned after the events of 1981 and 1982, and refused to participate in the federal-provincial conferences of the early 1980s and mid-1980s. The isolation of Quebec had a highly detrimental effect on the conduct of intergovernmental relations during this period." (February 2, 1988)

J. Stefan Dupré

(Professor of Political Science, University of Toronto)

- "There are two possible scenarios. In the first scenario, the Meech Lake/Langevin Accord fails to be ratified by Canada's eleven parliamentary assemblies. I submit to you that in this scenario, the Accord will simply have to be reinvented but very likely in circumstances that are far less auspicious than the present. Years, likely more than a decade, will pass during which all other items on the constitutional agenda, notably aboriginal rights, are on hold.

In the second scenario, the Meech Lake/Langevin Accord becomes part of Canada's constitutional law. From this point forward, we have a constitution which is legitimate from sea even unto sea. With the symbolic monstrosity of Quebec's dissent removed from the Canadian landscape, it will be possible to approach the constitutional agenda with a sense of proportion and a sense of priority." (February 22, 1988)

Group of Eleven Academics*

- "We believe the Accord to be a fundamental contribution to Canadian unity, to the improvement of federal-provincial relations and to our capacity to achieve our goals as a society. Now is the time to act in this matter. The costs of failure would be exceedingly high." (Submission to the Select Committee, p. 1)
- "Taken together, the Constitutional changes of 1982 and those proposed in the Accord constitute an acceptable and creative balancing of the competing views of Canada." (ibid, p. 3)

James C. Simeon

(Assistant Professor, Department of Political Science, University of Western Ontario)

- "In my view, the Constitutional Amendment, 1987, although far from perfect strikes a reasonable balance between federal and provincial interests in Canada. Furthermore, it meets the test of furthering the 'national interest'." (Submission to the Ontario Select Committee, p. 6)

Honourable J.W. Pickersgill

(Former federal Cabinet Minister, Secretary to the PM and Secretary to the Cabinet)

- "What Canada needs is willing acceptance of the Constitution by Quebec, and the present government and Legislature of Quebec have offered that acceptance on very reasonable terms ... [There] will be no constitutional changes of any consequence as long as Quebec continues to boycott change, until it is willing to accept the Constitution." (March 24, 1988)

* Keith Banting, Queen's; Thomas J. Courchene, York; William R. Lederman, Queen's; Peter M. Leslie, Queen's; Kenneth McRoberts, York; John Meisel, Queen's; Peter Russell, University of Toronto; Richard Simeon, Queen's; Donald Smiley, York; Hugh G. Thorburn, Queen's; and Ronald Watts, Queen's

Richard Simeon

(Director, School of Public Administration, Queen's University)

- "[It] really is essential to find some way that is acceptable to Quebec and to the rest of Canada to secure Quebec's voluntary accession to the Canadian constitutional order. Certainly, I see this as the Quebec round; I see that as the great achievement of the Accord and that is the characteristic of the Accord which we would really not want to lose." (March 22, 1988)
- "What Meech Lake does is not to set aside 1982 but to pick up on those things which were left out and to reaffirm our federal character. Meech Lake is a solution to a set of problems that has dominated our thinking for a very long time and exorcises some pretty deep wounds, it seems to me." (March 22, 1988)

Peter Meekison

(Vice-President of the University of Alberta, former Deputy Minister of the Alberta Department of Federal and Intergovernmental Affairs)

- "I believe the Accord was and remains a carefully drafted and balanced document and, if ratified, will benefit Canadian unity and Canadian federalism. The most obvious reason is that it brings Quebec, politically, into the Canadian constitutional framework. Secondly, it commits all governments to a process of constitutional review and reform in the future." (February 1988)

Honourable Ian Scott

(Attorney General of Ontario)

- "Meech Lake secures Quebec's adherence on the basis of proposals that are moderate compared to many advanced by a Quebec government in the past 30 years. The Meech Lake Accord represents the very minimum that would be acceptable to any conceivable Quebec government in return for its acceptance of the Constitution." (Submission to the Ontario Select Committee, May 4, 1988, p.12)

Honourable Ian Scott
(Attorney General of Ontario)

- "[The] constitutional vision of pluralism and accommodation is the vision of Meech Lake. The Accord does not purport to settle for future generations the ongoing debates about the nature of the country. Rather than seeking a futile once-and-for-all settlement of fundamental questions, the Accord provides a space within which politics can continue with civility and mutual respect. It sees politics as a continuing exercise in finding compromise and building trust. It rejects polarization and tests of strength." (ibid, p.7)

Honourable Gordon Robertson
(Former Secretary to the federal Cabinet)

- "If the constitutional Accord is rejected, it is going to be a slap in the face of Quebec ... That slap in the face would stand in the way of the participation of Quebec in all manner of things that are important in Canada."
- "If we have a situation in which the Accord is rejected, and we have that slap in the face to Quebec, and if we have a situation in which we operate on the basis of the 1982 Constitution to which Quebec is not an agreeing partner, I think it will be open to some future leader of the independence faction in Quebec to argue that the constitution of Canada is illegitimate, is a Constitution that was imposed on Quebec, not agreed to by Quebec, and therefore does not and should not command the loyalty of Quebec. I cannot think of anything more dangerous for the future of the country than to have a situation like that." (March 23, 1988)
- "[If] one sees the process, starting from, say, 1968, when the constitutional discussions started, up to the present time, the five points put forward by Quebec in 1986 are extremely modest in relation to the aspirations put forward even by federalist governments, not by independantiste governments ... I think it is the most reasonable set of propositions one could possibly hope to get from a government of Quebec." (March 23, 1988)

Honourable Jean-Luc Pépin

(Former federal Cabinet Minister, Co-chairperson on
Pépin-Roberts Task Force on Canadian Unity)

- "In my view, the highest priority of 1987, 1988 and following years was to ensure that Quebec would accept the agreement reached in 1982; that seemed fundamental to me." (March 23, 1988)

HIGHLIGHTS OF COMMITTEE REPORTS

SPECIAL JOINT COMMITTEE OF THE HOUSE AND SENATE

- "We believe that the 1987 Constitutional Accord represents a reasonable and workable package of constitutional reforms." (p. 141)
- "The Joint Committee of the Senate and the House of Commons is therefore pleased to recommend to the Senate and the House of Commons adoption of the 1987 Constitutional Accord." (p. 147)
- "The success of the "Quebec Round" was due to some extent to the fact that the agenda for the 1987 Constitutional Accord was intentionally limited by the provincial premiers in their Edmonton Declaration to Quebec's five conditions. Omission of worthy items from the 1987 Constitutional Accord is therefore not to be taken as proof that issues not dealt with have been ignored, rejected or deemed unimportant." (p. 135)
- "All four areas of concern [i.e. the process of constitutional reform; the interaction of the Accord and the Charter; the provisions affecting the territories; and aboriginal constitutional issues] have two important factors in common. First, each raises issues that go well beyond the limited scope of the 1987 Constitutional Accord. In our opinion, rejection of what First Ministers accomplished in their limited agenda in the "Quebec Round" would not solve the real problem for the people involved. Second, accepting that these issues are important and need to be addressed, there is no real consensus amongst members of the public or government leaders about what should be done." (p. 142)
- "We approach our assessment of the 1987 Accord on the premise, which we know from our own experience to be true, that one can be a strong Albertan as well as a patriotic Canadian, and the same is true of the inhabitants of every region and province in the country." (p. 19)

**PRINCE EDWARD ISLAND: SPECIAL COMMITTEE OF THE
LEGISLATURE ON THE 1987 CONSTITUTIONAL ACCORD**

- "In the historical and cultural context of Quebec society the reference to distinctiveness is therefore important in restoring some of the legal balance thought necessary for that society's survival within Canada and North America. This interpretative reference therefore is the minimum that would be acceptable for Quebec." (p. 4)

ONTARIO SELECT COMMITTEE ON CONSTITUTIONAL REFORM

"... we have not been convinced by those who see in the provisions of the Accord a mandate for the ultimate independence of Quebec or the 'balkanization' of the nation into provincial states or the emasculation of national social programs or, indeed, any other apocalyptic scenario. In our view, such projections do not sufficiently take into account our recent history, and much present constitutional and administrative practices. We also think that Meech achieves a balance between long-sought and yet appropriately limited constitutional adjustments." (p. 8)

"What have been termed the so-called Quebec 'conditions' have, and this is a considerable and positive constitutional advance, been broadened to include similar treatment for all provinces. In our view, this is precisely as it should be, and we think that the fundamental federal character of Canada is thereby strengthened." (p. 9)

DEBATE IN THE HOUSE OF COMMONS/PROVINCIAL LEGISLATIVE
ASSEMBLIES

HOUSE OF COMMONS - FIRST DEBATE

The Right Honourable Brian Mulroney
(Prime Minister)

- "... the Meech Lake Accord is not only a sound document - it is one that conforms to a consistent, generous and logical vision of Canada. It respects the equality of Provinces and values the distinctiveness Quebec brings to Canada. It specifically reaffirms the strength and the leadership of the national Government in the great constitutional debate. Quite obviously, the Accord is not perfect. But if we wait for perfection, we risk undoing what has been accomplished and will make no progress at all."
(House of Commons Debate, October 21, 1987, 10248)
- "I support the Meech Lake Accord because it is a time for healing in this country. It is a time for redeeming solemn pledges." (ibid, 10248)
- "Certain promises were made to Quebecers at the time of the 1980 referendum, solemn promises about constitutional renewal, which were not kept, unfortunately. With the Meech Lake Accord, that promise, made to Quebec on behalf of all parliamentarians, has been honoured on terms that are good for all Canadians." (ibid, 10245)

The Right Honourable John Turner
(Leader of the Opposition)

- "... we support the Accord, because it brings Quebec into the Canadian constitutional family politically, emotionally, and psychologically."
(House of Commons Debates, September 29, 1987, 9428)

The Honourable Edward Broadbent
(Leader of the New Democratic Party)

- "As a country we can celebrate the end of the constitutional isolation of Quebecers and the fulfillment of the promise made to Quebec during the 1980 referendum. Mr. Speaker, this Accord meets the aspirations of both the people of Quebec and all Canadians. Thanks to its positive approach towards Quebec, it enables Quebec as a distinct society to resume its place and participate fully and actively in the Canadian federation." (House of Commons Debates, October 21, 1987, 10240)
- "But this constitutional Accord is a good document, good for Canada, good for Quebec, good for all the other provinces and good for individual citizens who want their rights preserved. We need to support it." (ibid, 10244)

HOUSE OF COMMONS - SECOND DEBATE

The Right Honourable Brian Mulroney
(Prime Minister)

- "Now the hurt of 1981 will be healed at last and the country whole again will be able to move on to the constitutional, social, and economic challenges of a new decade and a new century." (House of Commons Debates, June 14, 1988, 16406)

The Right Honourable John Turner
(Leader of the Opposition)

- "The history of recent years has clearly demonstrated that Quebec's absence from the table, even temporarily, impedes any future constitutional development and weakens our country. Indeed, no future constitutional change or reform is possible without the participation of Quebec. Those who oppose Meech Lake as an imperfect document fail to take that into account." (House of Commons Debates, June 14, 1988, 164011)
- "The Meech Lake Accord is not ideal. That is true. But it does have the overwhelming advantage to national unity of bringing Quebec to the table

and bringing Quebec back to the Canadian family. We have to build on that unity before we move on to any other constitutional reform." (ibid, 16413)

The Honourable Ed Broadbent

(Leader of the New Democratic Party)

- "We have heard a great deal about the terms of this constitutional Accord, and I speak frankly when I say we have heard a lot of nonsense from many parts of our land and from people who, in my judgment, ought to know better or ought to have made an effort to actually read the document before they spoke out. As a consequence, there are many legitimately perceived misconceptions about this deal, but they are, nonetheless, misconceptions." (House of Commons Debates, June 14, 1988, 16414)
- "The Accord does not undermine the division of powers. It does not supersede the Charter of Rights and Freedoms. It does not diminish federal spending power. It does not create a chequer-board Canada. It does not give control over the Supreme Court to the provinces. It does not diminish the rights of linguistic minorities.

What it does is complete the job that was started with patriation in 1982 by allowing Quebec to come fully and proudly into the constitutional fold. It allows and, indeed, encourages Quebec to become a full member of the Canadian family." (ibid, 16416)

- "... this deal was negotiated in good faith by Premiers who put it on their agenda, and it is accepted in every corner of the Province of Quebec. The people of Canada have to understand that it is good not only for Quebec, but it is good for Newfoundland, Ontario, the Prairies, it is good for all of Canada. We have to understand that." (ibid, 16414)
- "... the conquest is past. In our generation, it is time to finally walk together as equals." (ibid, 16417)

Honourable R. Hnatyshyn
(Minister of Justice)

- "Canada's history is somewhat unique in the way we have continually created harmony out of seemingly discordant national elements. This is the glory of our past and the strength of our future. The Constitution Amendment, 1987 continues this tradition. It envisions a nation moving ever closer to a more co-operative and tolerant way of life and of government. It is a vision in which we can take pride." (House of Commons Debates, May 19, 1988, 15636)
- "The present moment must belong to Quebec so that the future may belong to all Canadians." (House of Commons Debates, May 19, 1988, 15635)

Pauline Jewett
(New Democratic Party Member: New Westminster-Coquitlam)

- "...in the view of Members of this Party, Meech Lake and what has been said about Meech Lake over the past several months has reinforced rather than diminished our support for the Accord. It has reinforced in several important respects our belief that Meech Lake is actually stronger and more effective than we had even dreamed at the time that it would be." (House of Commons Debates, May 19, 1988, 15647)

QUEBEC

Honourable Robert Bourassa
(Premier of Quebec)

- "The Constitution will guarantee Quebec the necessary security to develop within the federation." (National Assembly Debates, June 18, 1987, 8707)
- "There is, in Quebec's free and voluntary assent to the Constitution Act, 1982, an exceptional expression of the right of the Quebec people to choose their destiny, as they did in a more explicit way in 1980, in choosing the Canadian option." (Debates, June 18, 1987, 8709)

- "Adoption of this resolution will lead us to greater political stability. True patriotism expresses itself by this will to struggle and progress collectively and individually."
(Debates, June 18, 1987, 8709) [unofficial translations]

Honourable Gil Rémillard

(Minister responsible for Canadian Intergovernmental Affairs)

- "This is an historic agreement. This is an agreement for the generations to come, for my son, who will be able to live in a country of which he is proud, for our sons, for our children and for the generations to come, who will be proud to belong to this country, to live as we do with our originality and our distinctiveness, but also to live within this federation. This is an historic agreement and a first step towards constitutional reform that will allow Quebec, as a major partner of this federation, to be a partner within a great country, Canada." (National Assembly Debates, June 19, 1987, 8787) [unofficial translation]

SASKATCHEWAN

Honourable Grant Devine

(Premier of Saskatchewan)

- "This amendment signals the recognition of realities brought about as a result of changing national and international conditions :... Furthermore, we have seized this opportunity to take measures to adapt our federal institutions to suit changing circumstances. Our success in this venture will allow us to prepare for the challenges of the future, united and confident in the belief that we are capable of resolving some of the most daunting problems of national well-being. In all respects, we have made important strides towards a stronger and indeed a better Canada." (Saskatchewan Hansard, July 9, 1987, 1052)

Mr. Allan Blakeney

(Leader of the Saskatchewan Opposition)

- "It is of paramount importance that the constitution of Canada have full legitimacy in Quebec as well as elsewhere in Canada. And here I speak not of black letter law, but of political reality -- of what is in the hearts and minds of Canadians, in Quebec and outside Quebec. The resolution before us is a great stride forward in achieving this objective." (Saskatchewan Hansard, July 20, 1987, 1272)
- "The importance of the resolution is that it will serve in a symbolic way to complete the constitutional discussions and negotiations which proceeded during the 1970s and 1980s, and culminated in the 1982 patriation of the constitution." (Saskatchewan Hansard, July 20, 1987, 1274)

ALBERTA

Honourable Don Getty

(Premier of Alberta)

- "If we pass this Meech Lake resolution and it proceeds through the other Legislatures as well, Canada will for the first time in its history have a made-in-Canada Constitution that is supported by and involves all the governments of Canada and all the people of Canada." (Alberta Hansard, November 23, 1987, 2001)
- "It's pretty clear to anybody who travels in Quebec that by recognizing them as a distinct society in Canada, you are really recognizing a fact of life, and that's what the first ministers wanted to do: recognize an actual fact of life in Canada by the clause that describes Quebec as a distinct society." (Alberta Hansard, November 23, 1987, 2002)

Mr. Ray Martin

(Leader of the Alberta Opposition)

- "The major and best part of it ... is that it brought Quebec, if you like, into the constitutional family of Canada. To me this was an absolute necessity ... a very positive growth,

if you like, in terms of our country." (Alberta Hansard, November 25, 1987, 2047)

- "Many people would argue that Quebec was already in the Constitution even though they didn't sign it ... But constitutions are only good if people believe in them, if people right across the country believe in them. Obviously, we had one quarter of the population of the country that didn't sign this document; in other words, a quarter of our country that obviously did not believe in the 1982 Constitution. So even though in a legal sense they were a part of it, certainly there was no moral authority for the 1982 Constitution, at least in the province of Quebec." (Alberta Hansard, November 25, 1987, 2047)
- "I would guarantee that if they were not part of that Constitution and had not signed this Constitution, somewhere down the line some separatist outfit in Quebec, whatever its name, would use this as a rallying point, and it would be very, very dangerous for our country at that particular time." (Alberta Hansard, November 25, 1987, 2047)
- "What brought Quebec in, basically, is the distinct society clause. Again, Mr. Speaker, for those people who say that we're giving Quebec a distinct society that's going to affect the rest of us out in Alberta or British Columbia or Newfoundland or Prince Edward Island, this is nonsense. All it is is recognizing the reality of Canada ... All it basically is doing ... is allowing Quebec to maintain and protect their own language and culture." (Alberta Hansard, November 25, 1987, 2047)

PRINCE EDWARD ISLAND

Honourable Joseph A. Ghiz
(Premier of Prince Edward Island)

- "The exclusion of Quebec continues to put the future of Canada at risk and this fact is not seriously questioned in any part of the country. The exclusion of Quebec, Mr. Speaker, also puts on hold any present or future action flowing from the Constitution."

- "[This] Resolution is about Quebec as a founding partner in Canada, It is about restoring to Quebec what it had in fact and in constitutional tradition before 1982. It is about bringing Quebec as a full and equal partner in the constitutional evolution and growth of our country. The Resolution does these things with Quebec without at the same changing in a substantive way the status quo for the provinces, for women, for aboriginal groups or for minority language or cultural groups." (Prince Edward Island Legislative Assembly, April 5, 1988)

NOVA SCOTIA

Honourable John Buchanan
(Premier of Nova Scotia)

- "[In] 1982, Canada's Constitution came home. The Accord ... at that time, signed by nine provinces and by the Government of Canada, was missing the seven million Canadians who did not sign the Accord through their elected government ... In 1986-87, the healing process was begun at Meech Lake and then later in Ottawa. It will be completed with the passage of the Meech Lake Accord by 10 Legislatures and by the Parliament of Canada." (Assembly Debates, May 25, 1988, p. 4173)
- "I believe ... as other Premiers have indicated clearly, that the Accord will pass in the Legislatures of Canada, will become part of the Constitution of Canada. If it does not, then this country, Canada, as a country will suffer. There can be no question about that. If this Accord is not passed by the ten Legislatures then the loser will be Canada. The reconciliation of Quebec in our constitution was the aim ... It can be met by the passage of the Accord." (ibid, p. 4173)

NEWFOUNDLAND

Honourable Brian Peckford
(Premier of Newfoundland)

- "The principal and overriding accomplishment of the Meech Lake Accord is that it provides an opportunity for a national reconciliation with the people of Quebec". (House of Assembly Debates, March 17, 1988, p.186)

ONTARIO

Honourable David Peterson
(Premier of Ontario)

- "This accord is a vital step in nation-building."
- "The accord does represent a solution in the best Canadian tradition. It is a viable accommodation. In both symbolic and practical terms, it is the kind of agreement that has characterized the building of this country."
- "The accord unblocks the constitutional reform. When it is enshrined, it will establish a new confidence in reform among all Canadians and a new attention to the Constitution." (Ontario Hansard, November 25, 1987, 533-34)
- "While our constitutional achievements have not been modest in building a modern, humane nation from sea to sea, they have been dogged by the inability to express an appropriate place for Quebec within Canada. The Meech Lake Accord finally captures that expression, and I believe the Meech Lake Accord is the first sign of a newer, bolder signature for Canada. (Ontario Hansard, June 29, 1988, 4855)
- "Canadians are fulfilling a promise they made to Quebecers during the referendum campaign. The eighties began with Quebecers saying yes to Canada. Before they end, Canada should say yes to Quebec. We must not lose this chance of welcoming Quebec back into the Canadian constitutional family." (ibid, 4856)
- "The historical brilliance of our nation has been its capacity to regenerate itself through honourable agreement and to constantly find accommodation." (ibid, 4587)
- "[...] the most important aspect of this debate is the fact that it is not about the end of constitutional reform in Canada, but about a new beginning. These amendments reconcile Quebec's long-standing concerns with those of Canada, while protecting the interests of all Canadians and furthering the process of constitutional reform and of nation-building." (ibid, 4855)

- "The Meech Lake amendments ensure not only Quebec's place in Confederation but also the place of all Canadian people. These amendments reflect our recognition that Canada is still a nation based on compromise and consensus where no province and no region can dominate, and at the same time, no province or region can be ignored." (ibid, 4855)

Honourable Ian Scott
(Attorney-General of Ontario)

- "This government believes that the constitutional resolution laid before the House is demonstrably in the national interest. In our judgement, it represents an essential and historic act of national reconciliation. It will bring to an end what we regard and what we must regard, all of us, whatever our views, as an intolerable situation: the constitutional isolation, in theory, in law, in fact, of Quebec from the rest of Canada."
- "The 1987 constitutional accord is not the end of the journey but another milestone in the continuing process of nation building." (Ontario Hansard, November 25, 1987, 550)

Bob Rae
(Leader of the Ontario Opposition)

- "We must take the first step. If we want to take all our steps before taking the first step, we will wait one hell of a long time and let's not pretend otherwise. Let's not forget that we waited 115 years for the patriation of our own Constitution. We had round after round, meeting after meeting. It was not, I say with great respect, an easy process. We have come now to a process of patriation without Quebec. This is the time to patriate with Quebec and then we can begin to create a constitutional future." (Ontario Hansard, June 29, 1988, 4854)
- "If we lose the perspective that this is the Quebec round, of course we will find areas to differ about and to fault. If we lose the perspective that the process of nation-building we are now engaged in has now to include Quebec as never before, then of course we will find the things which should be there."

Many of my constituents have said: "Well, there's nothing in it for us. There's nothing in it for me." I have two things to say to that. "Yes, there is, because including Quebec is good for all of Canada. It's good for Canada. It's good for all of us to have Quebec as part of the Constitution." My second point would be this. The process of future reform can only take place with the voluntary participation of Quebec."
(ibid, 4853-54)

BRITISH COLUMBIA

Honourable W. Vander Zalm
(Premier of British Columbia)

- "The Accord not only completes the work left unfinished when Quebec was left out of the 1982 agreement which led to the patriation of the Constitution, but it does so on terms fair to Quebec, fair to British Columbia and fair to all Canadians." (B.C. Hansard, 5532)

M. Harcourt
(New Democratic Party Leader)

- "I believe bringing Quebec formally into the Canadian family and granting [Quebec] its rightful place in Confederation is an important and indeed very happy occurrence." (B.C. Hansard, 5534)

ACADEMIC COMMENT

Tom Courchene

(Robarts Professor of Canadian Studies, York University)

- "The substance of Meech Lake represents a positive step in the evolution of our federation. However, it is likely only the first step of what will be a series of accommodations and initiatives as the Canadian federation wrestles to strike a new internal balance. (Robarts Centre for Canadian Studies, Working Paper Series 87-F02, p. 60).
- "In conclusion, therefore, I support the substance of the Accord and, to reverse the typical argument of those in favour of Meech Lake, as an added bonus in all of this Quebec will now become a full member of the Canadian constitutional family." (ibid, p. 60)
- "...It would appear that most aspects of the Accord can best be viewed as contributing to the processes of Canadian federalism rather than as part of some deterministic constitutional architecture that is somehow going to alter the fundamental nature of the federation." (ibid, p. 8)

Kenneth McRoberts

(Professor of Political Science, York University)

- "If the accord accomplishes nothing else, at least it will establish once and for all that Canada is a federal country. In the process, as an added benefit, it will help to heal the deep wounds created by Quebec's symbolic exclusion from the Canadian constitutional order. Canada could do far worse." ("The Case for Meech Lake", The Canadian Forum, December 1987, p. 13)
- "Compared to past proposals for a renewed federalism such as these, the Meech Lake Accord looks rather tame. Nonetheless, it is rooted in the same premises as they were; that the Canadian political order must be a federal one and that Quebec is a manifestly distinct society. It is ironic, after all that has happened over the last decades, that these assumptions should still be in dispute." (ibid, p. 13)

Pierre Fortin

(Professor of Economics, Laval University)

- "Given the enormous tensions that existed in federal-provincial relations until [Pierre Trudeau] left only three years ago, the spirit of the Accord is an incredible achievement." (Paper presented to the University of Toronto Symposium on the Meech Lake Accord, p. 4, October 30, 1987)
- "The very experience of consensus reached in full mutual respect and in a way that was consistent with the superior national interest may breed more similar experiences in years to come." (ibid, p. 4)
- "What the Meech Lake Accord does at this particular time of history is to strike just about the right political balance between the maximalists and the minimalists after 20 years of exhausting federal-provincial confrontation." (ibid, p. 6)
- "The Meech Lake Accord is just as important for its process as for its substance. It is there, with eleven governments working together for the national interest instead of only one pretending it does, that lies the best promise for our nation-building effort in the future." (ibid, p. 14)

Jim de Wilde

(Professor of Business Administration, University of Western Ontario)

- "Without the successful reconciliation of Quebec into the constitutional system, the real world of federal-provincial stalemate would have continued to limit the capacity of the federal government to head in new directions. ("Meech Lake, in Itself, Will not Weaken Charter", London Free Press, October 26, 1987)
- "The reconciliation of Quebec and the Canadian constitutional process is something to be celebrated." (ibid)

Michel Bastarache

(Professor, Faculty of Common Law, University of Ottawa
- now on leave and practicing with Lang Michener Lash,
Johnston - Ottawa)

- "I fully agree moreover with including in the constitution a clause to recognize Quebec's distinct society; this reflects reality and recognizes that Québec's participation in the Canadian federation need not produce a sterile uniformity." (From notes for a presentation at a symposium of the Constitutional and Civil Rights section of the Canadian Bar Association - Quebec Division, November 14, 1987, p. 1) [unofficial translation]

Peter Hogg

(Professor of Law, Osgoode Hall Law School, York University)

- "For the first time in Canadian history an answer had been provided to the question: what does Quebec want? The Accord reconciles the government of Quebec to the Constitution Act, 1982, so that it will henceforth participate in future constitutional change, and will no longer attempt routinely to override the Charter of Rights. Perhaps even more importantly, a sense of grievance flowing from Quebec's exclusion from the agreement of November 5, 1981 has been erased or at least mitigated." (Peter Hogg, Meech Lake Constitutional Accord, Carswell, 1988, p.4)

Rodrique Tremblay

(Professor, Department of Economics, University of Montreal)

- "... the constitutional reform of Meech Lake aims to establish a co-operative and harmonized federation in Canada, by having provincial governments participate directly in federal decisions. On the one hand, by constitutionalizing First Ministers' Conferences, one ensures that the interests of the main regions of Canada will be taken into account in the consideration of major national projects. On the other hand, by ensuring that federal arbitration bodies such as the Supreme Court and the Senate are no longer solely within the control of the federal government, which is contrary to a true

federal principle, but will be partly the responsibility of provincial governments, one ensures a better balance between centripetal and centrifugal forces, in what should be recalled is the second largest political territory in the world." (translation - Le Devoir, June 16, 1988)

Murray Donnelly

(Former Professor of Political Studies, University of Manitoba)

- "How does one balance the pros and cons of the 1987 Constitutional Accord? Its great accomplishment is that it will turn (when ratified by all the provinces) a recalcitrant and defiant province into a willing partner in Confederation. The price was not too high - the widely held opinion that Quebec gets new constitutional powers is wrong. Nothing changes in the distribution of legislative powers ... Federalism will be better when the Accord is ratified." ("Meech Lake will Work - New Accord Will Help Build a Better Federalism", Winnipeg Free Press, February 15, 1988)

Desmond Morton

(Historian and Principal of Erindale Campus, University of Toronto)

- "There are legitimate criticisms to be made about the Meech Lake deal and about its 1982 predecessor. Both were the work of a handful of exhausted men; both show the resulting flaws. In both cases, party leaders have accepted compromises because the alternatives were too risky for Canada." (Toronto Star, June 15, 1988)

RECENT POLITICAL COMMENT

Honourable Joseph A. Ghiz

(Premier of Prince Edward Island)

- "All critics of the Meech Lake Accord agree that the shortcomings of the 1982 Constitution Act have to be corrected and that Quebec has to be restored as a full partner in confederation. After that initial agreement there is a "BUT", with a variation of the theme that the price is too high or something else should have been included. The reality is that First Ministers reached a consensus because they limited their task to responding to the very reasonable conditions of Quebec put forward at the Premiers' meeting in Edmonton in August of 1986. Its attractiveness and strength lie in its simplicity. The Accord restores wholeness to Canada without at the same time changing the status quo for the aboriginal peoples, for women or for multicultural groups. Nor does the Accord change in a substantive way the status quo for the provinces, that is the basic distribution of powers."

"I and other First Ministers in this time of our history have exercised political judgement. As a politician, I have to recognize a major flaw in the 1982 Act which excluded Quebec. As a politician I have a responsibility to end the isolation of Quebec because its exclusion continues to put the country at risk. As a politician I have to tell the residents of the province and the citizens of Canada that the exclusion of Quebec puts on hold any present or future action flowing from the constitution. As a politician and as a Canadian I want to seize upon a unique opportunity to bring about the reconciliation of Quebec and to build a stronger Canada". (Address to the Institute of Island Studies, April 11, 1988)

Honourable Peter Lougheed

(Former Premier of Alberta)

- "I believe Meech Lake was a superbly important step for Canada because I was there ... (at the 1981 Constitutional Conference) and it was a very major matter of unfinished business not to have Quebec part of it." (Saint John Telegraph Journal, April 29, 1988)

Senator Lowell Murray

(Minister of State for Federal-Provincial Relations)

- "In my mind, the settlement forced upon Quebec in 1981 could not be the proper base on which to build the Canada of tomorrow." (Senate Debates, March 31, 1988, 3055)
- "The Meech Lake Accord will help transform our Constitution, a document which, with limited change, has served us for 120 years. In so doing, the Accord will not revolutionize our constitutional arrangements. Rather, it reaffirms the view of the federation held by a broad spectrum of Canadians. This view is not based on mistrust, a pugilistic vision of competition between the partners of the federation. Rather, it assumes the interdependence of the federal and provincial governments and provides a better reflection of what Canadians want Canada to be - a generous, tolerant and united society which respects diversity and which believes that governments should work cooperatively within their respective spheres of jurisdiction." (ibid, 3055)

Senator Arthur Tremblay

- "The purpose of the Constitutional Act, 1987, once it is proclaimed, will be to put things back in their proper order in a federation such as ours.

It would not have been natural that the Constitutional Act of 1982, the purpose of which was to sever the last colonial link still connecting us with Westminster, should go through all the necessary legal stages without Quebec being part of the operation, the only excluded partner of the Federation. It would not have been normal that Quebec should be compelled for instance to abstain from voting as it did during the Constitutional Conferences on Indian rights, under either the Bourassa Government or the previous Government.

It was no more natural for that situation to last until 1982. It was even less normal to act as though it would last indefinitely." (Senate Debates, April 20, 1988, 3179)

Senator Richard Doyle

- "The achievement of 1981 was shadowed by the travail that plagued it. But it had no hope of enduring as long as it was only a law to be enforced in one of our ten provinces and not an expression of the unity of purpose of them all."
(Senate Debates, April 19, 1988, 3108)

OTHER RECENT COMMENT

Honourable Jean-Luc Pepin

(Former federal Cabinet Minister)

- "Canadian politicians have resolved a number of points of conflict without a national crisis. Constitutional reform might become more accepted from now on as a normal activity in Canadian politics, not necessarily disadvantageous to the economy, as so widely believed in the past." (Notes for a speech to the Ottawa Chamber of Commerce, June 22, 1987)
- "The Accord will have demonstrated, among other things, that Canadians can resolve their constitutional problems without political crisis. Perhaps they will make it a habit." (Notes for a speech to the Ottawa Chamber of Commerce, May 22, 1987)

Honourable J.W. Pickersgill

(Former federal Cabinet Minister, Secretary to the PM and Secretary to the Cabinet)

- "... I think the Meech Lake Accord is the greatest act of statesmanship that there has been since the Constitution was repatriated. And not only that, I think it will, if it's approved, remove the rather mean, shabby and almost underhanded way in which the patriation was carried out." (CTV/CJOH "Insight", May 22, 1988)

Louis Duclos

(Former Liberal Member of Parliament)

- "... the inclusion in the Constitution of provisions concerning the composition of the Supreme Court of Canada and the method for nominating its members represent quite remarkable progress from Quebec's standpoint. In effect whereas the presence of three judges from Quebec on the Supreme Court was previously attributable to a simple law of the Parliament of Canada which could be changed at anytime, the Meech Lake Accord makes it a constitutional requirement which cannot be revoked without the consent of Quebec itself." (Translation - "A Victory for Quebec on Several Fronts", Le Devoir, February 2, 1988)

D'Iberville Fortier

(Commissioner of Official Languages)

- "[The] Meech Lake Accord reaffirmed the fundamental importance of Canada's linguistic duality and brought with it the hope that Quebec would, once again and by general consent, be part of the constitutional fold. How otherwise could we speak of a united Canada? Despite its imperfections, the Accord is a major step in the right direction." (Annual Report 1987, i)
- "The 'distinctiveness' of Quebec, which is already obvious in the British North America Act, is ... a given, both of history and of contemporary common sense ... It is normal that the legislature and government of Quebec be assigned the role of 'preserving and promoting' its own unique part of Canada's cultural ecology." (Language and Society, Fall 1987, p. 6)

RE-OPEN THE ACCORD FOR RE-NEGOTIATION

TESTIMONY OF WITNESSES: PUBLIC HEARINGS

SPECIAL JOINT COMMITTEE OF THE HOUSE AND SENATE

Honourable Gordon Robertson

(Former Secretary to the Federal Cabinet)

- "Another question is whether there is a reasonable prospect of getting a better arrangement than the present one. From my own experience in constitutional negotiations, I would think it is most improbable that it would be possible to get any arrangement significantly better than the present one." (3:78)

Peter Leslie

(Director, Institute of Intergovernmental Relations,
Queen's University)

- "The Accord is probably for all practical purposes not amendable. This does not mean that the task before this Committee or before Parliament is an unimportant one; on the contrary, I think it is essential that the terms of the Accord be looked at in detail and examined to see what implications they may have, because the decision must be made whether to accept it or reject it." (4:98)
- "I do not believe it will really be possible to say we sort of like it, but we insist that there be certain changes. This would reopen the whole process, which one's observation of the events leading up to what we have now would suggest would be impossible to bring to fruition." (4:98-99)

Richard Simeon

(Director, School of Public Administration, Queen's University)

- "I would like to give my support to the accord as it now stands. While I do have a great deal of sympathy with many of the concerns that have been raised about it, I am convinced that to reopen it now in any substantial way is to ensure that it will quickly unravel and with very, very little possibility of our being able to put it back together again.

- It seems to me that those who wish to reopen discussion at this time have indeed a very heavy responsibility to bear, because I think they do jeopardize the fundamental achievements that are in the accord." (5:68)
- "The committee and the groups involved should recognize that no single set of changes will capture all the interests seeking constitutional recognition, or restate all the commitments we have made before ... This document is about bringing Quebec in and about establishing a better balance between federal and provincial governments. I think it does that well. I would therefore like to see the committee report in favour of this resolution and, if necessary, to add to that a set of recommendations concerning the future constitutional agenda rather than tamper with the resolution itself. (5:74)

William Lederman

(Professor, Emeritus, Faculty of Law, Queen's University)

- "It would be very dangerous to start amending this text at this point ... I am afraid that if you start in with ... amending something else, there will be no need to it. The effort will unravel and dissolve, I am afraid.
- The trouble with amendments is the new provisions will raise the same problems of omission the old ones did. There will be new problems of omission. So you fit them up, and pretty soon you are on the way to the 10,000 pages instead of the 10 pages that I talked about." (7:32)

Peter Meekison

(Vice-President of the University of Alberta, former Deputy Minister of the Alberta Department of Federal and Intergovernmental Affairs)

- "To pull on a particular thread could unravel the entire agreement, because the delicate design, so carefully woven, can be easily destroyed. There will be future discussion." (10:46)
- "I feel that if amendments are made, the likelihood of it becoming unraveled is greater than of it holding together. For one thing, the

province of Quebec had endorsed the resolution as it now stands, so it would necessitate that province reopening the debate and accepting the amendment ... I think the consequences of Quebec not accepting this are incalculable. I think it would be very damaging to Canada and very damaging to national unity." (10:54)

Honourable J.W. Pickersgill

(Former federal Cabinet Minister, Secretary to the PM and Secretary to the Cabinet)

- "A Constitution is not a Christmas tree on which everybody is entitled to get some kind of special recognition for some kind of special thing." (10:128)
- "Insistence on amendments ... unless there is a typographical error or something of that sort, will almost certainly unravel that very delicate agreement.
- If Quebec is rebuffed, if this accord becomes discord, and the opportunity is lost to get the acquiescence of the constitutional authorities in Quebec, my guess is...that it probably will not arise again for another generation, and never again on such reasonable terms." (10:126)

Laurent Picard

(Professor and Former Dean, McGill University, Faculty of Management)

- "The whole objective in the complex negotiation is to create a commitment to a consensus. Once this is accomplished, any new important change or even unimportant change can and will create among some signatories the feeling of being released from the commitment. A commitment is based on certain specific content and only on that specific content. To reopen the content will probably end up destroying the commitment of some of the signatories and as a consequence, to an early rejection of the Accord." (12:57)

Solange Chaput-Rolland

(Political commentator, Commissioner, Pepin-Robarts
Task Force on Canadian Unity)

- "But for heaven's sake, let us not try to solve 200 years of history in 10 days! Let us leave the dust settle on the Meech Lake agreement and see how the provinces react. The second constitutional conference will deal with the Senate.
- If the Meech Lake Accords created injustices, I do not feel the people of Canada would let these injustices persist without trying to repair them in the coming constitutional conferences. For the time being, let us leave things as they are, please." (13:16)

ONTARIO SELECT COMMITTEE ON CONSTITUTIONAL REFORM

Group of Eleven Academics

(from Queen's University, York University and the University of Toronto)

- "Only the most compelling reasons could justify reopening the agreement that has been made. We are convinced no such reasons exist." (Submission to the Select Committee, p. 2)
- "The Accord represents a delicate balance negotiated by the First Ministers only with the greatest difficulty. The House of Commons and three provincial legislatures have now given their assent. The final approval of Parliament is now required, together with that of the legislatures of Ontario and the six other provinces that have yet to endorse it. If any of the legislatures insists, at this point, on reopening the Accord, the result will almost certainly be to kill it, not 'improve' it." (ibid, p. 6)

Richard Simeon

(Director, School of Public Administration, Queen's University)

- "Implicitly or explicitly, I think most of the critics of the Accord really are telling us that this goal of achieving Quebec's consent really is not very important, or if it is important, it is certainly not as important as some other constitutional objectives. I know many of the critics have said that they do not wish to upset the agreement with Quebec and that they too work to see Quebec brought in, but I think relatively few of them have shown how those objectives, meeting their concerns and bringing Quebec in, could be reached." (March 22, 1988)

* Keith Banting, Queen's; Thomas J. Courchene, York; William R. Lederman, Queen's; Peter M. Leslie, Queen's; Kenneth McRoberts, York; John Meisel, Queen's; Peter Russell, University of Toronto; Richard Simeon, Queen's; Donald Smiley, York; Hugh G. Thorburn, Queen's; and Ronald Watts, Queen's

Honourable Ian Scott
(Attorney General of Ontario)

- "[The] Accord represents a complex, very delicate series of trade-offs among a number of governments after more than 20 years of negotiation. It permits us to take a modest step forward in the job of nation building. I am not persuaded that the changes proposed can be made without disturbing that fragile agreement." (Submission to the Ontario Select Committee, May 4, 1988, p. 12-13)
- "I am not satisfied that any shortcomings are so serious as to require immediate amendment of the Accord. Indeed, many of the concerns which have been raised before the [Ontario Select] Committee have less to do with the Meech Lake Accord and more with the shortcomings of the 1982 package of constitutional amendments." (ibid, p. 86)

Honourable Gordon Robertson
(Former Secretary to the Federal Cabinet)

- "As far as I am concerned, the case is anything but proven that the constitutional Accord of 1987 has the adverse effect on ... various rights that has been alleged. I am far from persuaded that this is the case." (March 23, 1988)
- "I think the constitutional convention is not the road to separatism. I think the failure to implement it may well be the beginning of a road to separatism, because ... I do not think the thing could be put back together again." (March 23, 1988)

Peter Meekison
(Vice-President of the University of Alberta, former Deputy Minister of the Alberta Department of Federal and Intergovernmental Affairs)

- "[When] an agreement is reached after long and sometimes difficult negotiations, it is usually based on a series of compromises and the recognition that perfection or absolutes may be impossible but that acceptable solutions are realizable. To pull on one particular thread could unravel the entire agreement because the delicate design so carefully woven can be easily destroyed." (February 1988)

HIGHLIGHTS OF COMMITTEE REPORTS

SPECIAL JOINT COMMITTEE OF THE HOUSE AND SENATE

- "Omissions of worthy items from the 1987 Constitutional Accord is therefore not to be taken as proof that issues not dealt with have been ignored, rejected or deemed unimportant... Senate Reform, aboriginal rights, devolution of power to the territories, multiculturalism, the extension and protection of linguistic rights, and the enhancement and further protection of individual rights within the Charter are all matters of the utmost concern that must now be addressed by the First Ministers." (p. 135)

PRINCE EDWARD ISLAND: SPECIAL COMMITTEE OF THE LEGISLATURE ON THE 1987 CONSTITUTIONAL ACCORD

- "[In] our considered opinion and acting on the best information we have today, we do not think the 1987 Constitutional Accord would survive reopening for amendments ... The rejection of this Accord would most likely set in motion a series of negative events the consequences of which are unknown, the duration quite unpredictable and the remedies beyond the control of any known set of decision-makers."
- "[This] Committee has to recognize that the rejection of the Accord will in effect freeze future constitutional evolution and leave unfinished for some time to come any progress in favour of Aboriginal people, minority language groups, our multicultural heritage, the commitment to regional development and Senate reform." (pp. 8-9)

ONTARIO SELECT COMMITTEE ON CONSTITUTIONAL REFORM

- "As long as Quebec is not at the table, no meaningful national progress can be expected on such future agenda items of groups seeking to enhance multicultural, aboriginal, territorial and equality rights.

It is only fair to observe that, whatever the results, each of those groups did secure constitutional ground in 1982 while Quebec did not." (p. 8)

DEBATES IN THE HOUSE OF COMMONS/PROVINCIAL LEGISLATIVE ASSEMBLIES

HOUSE OF COMMONS - FIRST DEBATE

The Right Honourable Brian Mulroney
(Prime Minister)

- "I can tell you, Mr. Speaker, without hesitation, that the Government of Canada is not prepared to jeopardize this act of national reconciliation by reopening for renegotiation virtually every section of the Accord, as some would have us do." (House of Commons Debate, October 21, 1987, 10248)

HOUSE OF COMMONS - SECOND DEBATE

The Right Honourable Brian Mulroney
(Prime Minister)

- "Hearings have been held, speeches have been made and reports have been published, but nothing that I have heard or read persuades me that the Accord should be reopened. We said, in fact, that we would reopen the Accord if an egregious error were found in it. None has been found." (House of Commons Debates, June 14, 1988, 16406)
- "Are we as a Parliament, as a people, to hold Quebec's constitutional reintegration hostage to the pursuit of perfection in these other areas? Let us not make the perfect the enemy of the good. Surely, we have a much better chance to improve our Constitution with Quebec as a full participant at the constitutional table. Surely, no Government in its right sense would try to proceed to these other issues without the participation of Quebec." (ibid, 16407)

The Honourable Edward Broadbent
(Leader of the New Democratic Party)

- "... should we allow this opportunity to slip through our fingers, should we fail to grasp the historic significance of this moment, I believe that future generations of Canadians will live to regret it." (House of Commons Debates, June 14, 1988, 16417)

PRINCE EDWARD ISLAND

Honourable Joseph A. Ghiz
(Premier of Prince Edward Island)

- "Members are called to debate and vote on the merits of what is before us, not on the untested merits of some yet-to-be-created alternative. If Canada says "NO" to Quebec a second time in this decade, our country will face a period of uncertainty and decision that will take many years to overcome." (April 5, 1988)

ONTARIO

Hon. Ian Scott
(Attorney-General of Ontario)

- "I believe that the accord cannot be analysed against some purely hypothetical or abstract alternative. The accord must be analysed in the light of the absolute necessity of achieving national reconciliation and discharging our promise of 1980. It is not sufficient to ask whether there is an alternative set of proposals which might theoretically be superior to the accord as written. The real issue is not one of theory; it is whether there is an alternative set of proposals which can accomplish in fact the critical and overriding task of national reconciliation."
- "If English Canada refuses to proceed with the accord, we will continue to live with the serious political consequences associated with Quebec's isolation from Canada. Moreover, I believe English Canada will appear to have said no to Quebec for the second time following the referendum in this decade."
- "To those who propose amendments ... we might keep in mind the following questions. First, how serious is the alleged flaw? Second, must the flaw alleged be corrected immediately, or is it possible the problem can be corrected at some future time, possibly by including it on the agenda for immediate attention by the first ministers at the 1988 first ministers' conference? Third, is the harm identified so significant that it would justify putting at risk the broad consensus we have achieved in pursuit of the overriding objective of national reconciliation?" (Ontario Hansard, November 25, 1987, 552)

RECENT POLITICAL COMMENT

Honourable Joseph A. Ghiz
(Premier of Prince Edward Island)

- "I should say that I envy somewhat those people ...who can address the accord on the basis of what it might have been or how it can be improved in some theoretical fashion, I envy them because I enjoy the challenge and freedom of debate. As a first minister living in these times I am, however, somewhat constrained by reality. The real-life challenge before me and other First Ministers is to heal the wrongs of the past and restore a sense of belonging and partnership to the people of Quebec who felt betrayed by the way the 1982 act came into being. I am constrained by the fact the Accord is the product of an extraordinarily complicated series of negotiations, is the result of good will and generosity of spirit, and is the beneficiary of a certain amount of good fortune in that a complex puzzle of elements came together with success. Having gone through the experience, Mr. Chairman, I am constrained by the knowledge that if the Accord is reopened to deal with a threat which the weight of evidence says does not exist or is very remote, then the country will be exposed to almost certain political and social harm. This harm will come from denying Canada future constitutional evolution and from the alienation that will grow in Quebec. Is the price too high? In the light of the history of our federation and of our constitution, I am convinced it is not." (Address to the Institute of Island Studies, April 11, 1988)

Senator Lowell Murray
(Minister of State for Federal-Provincial Relations)

- "This Accord brings Quebec back into the Canadian constitutional family, and that was the purpose, that was the objective, of the Quebec round. To reject this Accord now because it does not resolve other constitutional issues that were not even on the agenda during the Quebec round, to keep Quebec out for those reasons, would be irrational and ... it would be irresponsible." (Senate Debates, April 18, 1988, 3074-3075)

- "[There] is no pragmatic reason to reopen the Accord, if it is not to be scuttled, since many of the changes sought will be easier to achieve in future than in the present context, I submit that there is no morally justifiable reason to do so either. Quebec was the only party left isolated in 1982, unlike a number of those now seeking changes." (Senate Debates, April 21, 1988, 3215)
- "I suggest that those who propose such amendments are not seeking to improve the Accord, as they claim. The amendments being proposed are killer amendments. They have one purpose in mind - they are designed to kill the Accord." (ibid, 3215)

Senator Richard Doyle

- "The proposals in the alphabet of retreaded amendments before this [Senate] chamber represent a reworking of thrusts in the Accord that might be instructive as constitutional evolution continues, as surely it will, to meet the needs of a vital society. Mr. Trudeau notwithstanding - if I may dare to use that word - nothing 'binds us for all time.' Is there any one of these variations on the theme worth the loss of the fine and fragile moment we have reached?" (Senate Debates, April 19, 1988, 3109)

The Right Honourable John Turner
(Leader of the Opposition)

- "[The Meech Lake Accord] achieved the overwhelming purpose of bringing Quebec fully into the Canadian family. I would in way reopen Meech Lake: Meech Lake is closed." (Macleans, January 11, 1988, p. 10)

QUEBEC'S DISTINCT SOCIETY/CHARTER OF RIGHTS

TESTIMONY OF WITNESSES: PUBLIC HEARINGS

SPECIAL JOINT COMMITTEE OF THE HOUSE AND SENATE

Richard Simeon

(Director, School of Public Administration, Queen's University)

- "In some sense, one view would be to say certain values or perhaps even the whole Charter is absolute, where we really want to trump parliamentary sovereignty all of the time, where we want to trump federalism or trump distinct society all of the time, and that is a fair enough view. I just do not think it is a workable view in this country. That is one reason we have a notwithstanding clause and a section 1 in the Charter.
- In those sections we say that the Charter is really fundamentally important, but there are times in a free and democratic society when ... we say that the Charter, as important as it is, is not absolutely fundamental." (5:82)
- "If we simply said, to take the extreme, nothing in this accord in any sense is to infringe on any aspect of the Charter of Rights, I do not think we would have agreement." (5:82-5:83)

William Lederman

(Professor Emeritus, Faculty of Law, Queen's University)

- "How, then, does the distinct society clause work? How does it come to mean anything? Well, I think it operates by being an influence on section 1 of the Charter... The judges, when they are confronted with a statute that has been challenged for alleged inconsistency with some Charter provision, if they decide there is inconsistency, then have to proceed to the question of whether that exception is a reasonable exception, prescribed by law according to the standards of free and democratic societies. The distinct society in Quebec is of course a free and democratic society and in that respect has a great deal in common with the rest of Canada." (7:27)
- "To introduce the distinct society consideration as one of the considerations the courts should weigh in section 1 when they are trying to determine whether a challenged statute is to be treated as an exception or not to one of the

Charter's standards, I do not see as something that is going to upset the balance of Charter section 1." (7:27-7:28)

- "I think it has been true since 1867 that the courts have known that the Quebec society is, in certain important ways, a distinct society. That has always weighed with them in settling constitutional issues that touched closely on Quebec. This has been implicit. I would say that is still implicit and it is something the judges will look at when it is relevant and appropriate, when they are settling the Charter section 1 kind of question.
- Why the proposed section 2, the distinct society clause? Well, I think this is simply making explicit what has been implicit from the beginning." (7:28)

Yves Fortier, Q.C.

(Former President of the Canadian Bar Association)

- "In my estimation, there is no additional fettering of the rights which are found in the 1982 Charter which is brought about by any provision of the 1987 Accord." (12:94)

ONTARIO SELECT COMMITTEE ON CONSTITUTIONAL REFORM

Dr. David Cameron

(Deputy Minister, Intergovernmental Affairs, Ontario)

- "My sense is that the provisions of the Meech Lake according vis-à-vis the Charter, as understood in that sense, will not cripple or undermine its capacity to function as a very powerful Charter document for Canadians." (February 2, 1988)

Peter Hogg

(Professor of Law, Osgoode Hall Law School, York University)

- "My view is that you do end up with some pretty hypothetical and theoretical argument in order to claim that the distinct society clause is a serious threat to civil liberties in Canada." (February 2, 1988)

Group of Eleven Academics*

- "The Accord completes the unfinished business of the 1982 Constitution Act; it does not supersede it. The historic achievements of the Charter and the individual and group rights it enshrines remain in place." (Submission to the Select Committee, p. 5)
- "In our judgement, the distinct society does not reduce federal legislative authority; nor does it significantly impair citizen rights under the Charter or the ability of Canada to recognize the rights of its aboriginal peoples and its varied ethnic communities." (ibid, p. 3)

* Keith Banting, Queen's; Thomas J. Courchene, York; William R. Lederman, Queen's; Peter M. Leslie, Queen's; Kenneth McRoberts, York; John Meisel, Queen's; Peter Russell, University of Toronto; Richard Simeon, Queen's; Donald Smiley, York; Hugh G. Thorburn, Queen's; and Ronald Watts, Queen's

James C. Simeon

(Assistant Professor, Department of Political Science,
University of Western Ontario)

- "In my view, section 2(1)(b) [the distinct society clause] enshrines constitutionally what most Canadians accept as a social fact. Nor do I believe that this section will undermine the equality provision of the Charter of Rights and Freedoms. A greater threat here has always been the 'notwithstanding' clause in the Charter itself which gives the provinces and the Canadian Government the power to exempt specific legislation from the provisions of the Charter. Accordingly, criticisms of the Accord in this instance have been misdirected and overstated. (Submission to the Ontario Select Committee, p. 9)

Honourable Ian Scott

(Attorney General of Ontario)

- "The purpose of Clause 16 is not to imply a derogation from other clauses of the Charter. The purpose of Clause 16 is to protect the positions of cultural groups who do not identify themselves as either English-speaking or French-speaking ... Clause 16 should be understood, not as a backhand attempt to affect the Charter, but as defining the reach of the distinct society clause itself." (Submission to the Ontario Select Committee, May 4, 1988, p. 20)

Gerald A. Beaudoin

(Director of the Human Rights Centre and Professor of Law, University of Ottawa, Commissioner on the Pepin-Robarts Task Force on Canadian Unity)

- "One can compare the distinct society clause, as far as interpretation is concerned, to certain other clauses, such as the multicultural clause expressly set forth in section 27. It is odd that some people do not object to section 27 while they do to the distinct society clause. Yet the latter is rooted in the soil of our country." (Translation - Submission to the Select Committee, p. 24)

HIGHLIGHTS OF COMMITTEE REPORTS

SPECIAL JOINT COMMITTEE OF THE HOUSE AND SENATE

- "Amending the Constitution to include an explicit and unanimous acknowledgement of Canada's "linguistic duality" across the country is, in the Joint Committee's view, a major achievement."
(p. 50)
- "In the Committee's view, ...the limited recognition given by the proposals to the "distinct society", and the assignment of a role to the Quebec government to "promote" its distinct identity, are appropriate values to be reflected explicitly rather than implicitly in the Constitution. Insofar as the "linguistic duality" and "distinct society" clauses are statements of fact they are neither revolutionary nor particularly innovative. They reflect Canada as it is." (p. 39)
- "The decision was taken in 1982, when the Charter was introduced, to leave these questions of balance to be determined by the courts on the facts of a particular case. We believe that this was a sensible solution and that nothing in the 1987 Constitutional Accord relating to the "linguistic duality/distinct society" rule of interpretation calls for a different solution."
(p. 68)

ONTARIO SELECT COMMITTEE ON CONSTITUTIONAL REFORM

- "... the Committee concluded that clauses 1 and 16 of the Accord very likely do not pose a threat to Charter rights." (p. 42)
- "While we recognize that Quebec is legally bound by the Charter, the day the rest of the country cements the Accord with Quebec and resolves the constitutional impasse, will be the day Quebec willingly accepts the Charter of Rights and Freedoms as its own. This represents an important development for official language minority rights. This is surely a significant accomplishment." (p. 9)

DEBATES IN THE HOUSE OF COMMONS/PROVINCIAL LEGISLATIVE ASSEMBLIES

HOUSE OF COMMONS - FIRST DEBATE

The Right Honourable Brian Mulroney
(Prime Minister)

- "If I, for one moment, thought that anyone's rights were being overridden by this Accord, I would not have recommended it to my colleagues in Government, and the Government of Canada would never have brought it forward for consideration in Parliament today." (House of Commons Debates, October 21, 1987, 10246)

The Right Honourable John Turner
(Leader of the Opposition)

- "I do not believe there should be any conflict between that concept [distinct society] and the Charter of Rights and Freedoms." (House of Commons Debates, October 21, 1987, 9430)

The Honourable Edward Broadbent
(Leader of the New Democratic Party)

- "I wish to say at the outset that my Party would not support the Accord if we believed the rights of Canadians under the Charter were overridden in any way by this Accord. I say in this context that the Charter remains, and it remains as strong after this Accord as it was before this Accord was introduced." (House of Commons Debates, October 21, 1987, 10242)

HOUSE OF COMMONS - SECOND DEBATE

The Right Honourable Brian Mulroney
(Prime Minister)

- "... we have strengthened the Canadian Charter of rights and Freedoms because, for the first time, Quebec has accepted its moral significance and political legitimacy. That means that all the laws of Quebec will be subjected to the Charter, and the Charter will be interpreted in light of Quebec's distinctiveness, as it is now interpreted in light of Canada's multicultural and aboriginal heritage." (House of Commons Debates, June 14, 1988, 16407)

- "In 1982, Canada achieved patriation and an entrenched Charter of Rights but only at the price, the tremendous price, of a notwithstanding clause. So while the most fundamental rights of Canadians were guaranteed in 1982, the federal Government agreed that Parliament or provincial legislatures could override these fundamental rights by invoking the notwithstanding clause.

Nowhere in the Meech Lake Accord is there a compromise or a concession of the magnitude agreed to by the federal Government in 1982." (ibid, 16408)

The Honourable Edward Broadbent
(Leader of the New Democratic Party)

- "We would not have supported this Accord had we believed the Charter was endangered or diminished. I say that with great conviction." (House of Commons Debates, June 14, 1988, 16414)

"There are those who say that the Accord with its distinct society provision supersedes the Charter. How often have we heard that? How often have otherwise reputable newspapers published, and I speak frankly again, such nonsense? The reality is that courts in Quebec, before this Accord was even written, have referred to the distinct nature of Quebec society in their interpretation of our Charter, and in these judgments, the Charter provisions prevail. They were not abandoned. They prevail in those decisions in Quebec courts, and I say they will prevail in the future. The Charter is not threatened by this Accord." (ibid, 16414)

Honourable Robert Kaplan
(Liberal Member-York Centre)

- "It is clear that the distinct society clause is an interpretative provision. In relationship to the Charter of Rights and Freedoms, it is not a provision which cancels or diminishes other provisions of the Constitution or of the Charter of Rights and Freedoms. It is meant to be read to interpret them." (House of Commons Debates, May 19, 1988, 15647)

Pauline Jewett

(New Democratic Party Member: New Westminster-Coquitlam)

- "There is a misperception that actions taken under the Accord either to preserve linguistic duality or promote the distinct identity of Quebec will be immune from Charter review. There is a misperception that they can freely infringe upon the Charter, which is simply not the case."

"The same Charter review that applies now to all legislative Acts will apply to additional rules of interpretation relating to the distinct society and linguistic duality clauses. I suggest it is mischievous for commentators to continue saying that the Charter can be abrogated by the Meech Lake Accord." (House of Commons Debates, May 19, 1988, 15649)

NOVA SCOTIA

Honourable John Buchanan
(Premier of Nova Scotia)

- "There are concerns that rights granted in the 1981 Accord may have been taken away ... Every government in Canada, including the federal government, have constitutional opinions that that is not so, that the Meech Lake Accord does not derogate from the rights of women granted under the 1981 Accord, nor the rights of the aboriginal peoples." (Assembly Debates, May 25, 1988, p. 4171)

ONTARIO

Honourable Ian Scott
(Attorney-General of Ontario)

- "The 'distinct society' provision ... does not confer any powers whatever. It is an interpretative provision which will be used by courts where other constitutional provisions are unclear or ambiguous. This clause, so widely debated, therefore confers no power and is an interpretative aid alone. It instructs courts in cases of ambiguity to take into account the existence of language duality and distinctiveness in the process of interpretation."
- "This clause does not override anything in the Charter of Rights. Since it is merely an interpretative provision, it is subordinate to the charter. All Quebec laws, including those passed in order to preserve linguistic duality or promote the distinct identity of Quebec, must comply, like any other laws, with the charter. If a law violates the charter, then the law will be invalid."
- "The Meech Lake accord, far from undermining the charter, ensures its solemn and symbolic acceptance by the government of Quebec." (Ontario Hansard, November 25, 1987, 550-51)

ACADEMIC COMMENT

Pierre Fortin

(Professor of Economics, Laval University)

- "We believe that a fair social contract will finally emerge in Quebec that will protect and promote our distinctive identity, and yet remain generous for our minorities, English or other." (Paper presented for the University of Toronto Symposium on the Meech Lake Accord, October 30, 1987, p. 2)

Katherine Swinton

(Faculty of Law, University of Toronto)

- "The best interpretation of the distinct society clause is that it does not, in its language, "trump" s. 1, but works with it - that is, Quebec's limitations on rights must be demonstrably justified in a free and democratic society, albeit one that is distinct culturally and linguistically." (From a paper presented to the University of Toronto symposium on the Meech Lake Accord, October 30, 1987, p. 17)
- "With this in mind, the distinct society clause need not introduce a dramatic new factor into Charter interpretation. It was always possible for Quebec to try to justify its laws under s. 1 of the Charter by arguing that the purpose was to protect a distinct society and to preserve Quebec's distinct culture and language. Indeed, such an argument was advanced in Quebec Association of Protestant School Boards. The addition of the distinct society clause makes explicit the relevance and legitimacy of such an argument, but it does not ensure that the claim for diversity will outweigh the individual's claim to protection of his or her rights." (ibid, p. 17)

Michel Bastarache

(Professor, Faculty of Common Law, University of Ottawa
- now on leave and practicing with Lang Michener Lash,
Johnston - Ottawa)

- "The Constitution forms a whole and all guarantees must be interpreted in relation to each other. The distinct society can neither adopt measures contrary to the equality provisions nor derogate from the obligations set out in s. 133 of the Constitution. Each limitation of a fundamental freedom must be justifiable under the terms of s. 1 of the Charter." (Translation from notes for a presentation at a symposium of the Constitutional and Civil Rights section of the Canadian Bar Association - Quebec Division, November 14, 1987, p. 1)

André Morel

(Professor, Faculty of Law, University of Montreal)

- "Following the adoption and coming into effect of the 1987 Constitutional Amendment, the Canadian Charter will continue to guarantee Quebecers the same rights and freedoms as other Canadians. Quebec will not be able to infringe either the fundamental freedoms, or the democratic rights, or the legal guarantees, or the right to equality under the pretext that 'Quebec represents within Canada a distinct society' for such infringements, should they occur, could certainly not find support in the distinct character of the Quebec society." (Translation - "The Recognition of Quebec as a Distinct Society with respect to the Charter", The Adherence of Quebec to the Meech Lake Accord, from les éditions thémis, 1988, p. 61)
- "... the new article 2 of the Constitution Act 1867, combined with the first article of the Charter, continues therefore to guarantee that measures adopted will not be arbitrary, that the means chosen will limit 'as little as is reasonably possible' the right or freedom in question and that there will be proportionality between their results and the legislative purpose.

As a result, far from exempting in advance from the application of the Charter every Quebec law adopted in the name of the distinct society, as

certain pretend to believe, article 2, in paragraphs 1 and 3, institutes on the contrary a new balance between the protection of the individual rights and freedoms guaranteed by the Charter and the implementation of the unique responsibility which falls to the legislature and the government to protect and promote the values and specific interests of the Québec society ..."
(ibid, p. 63)

RECENT POLITICAL COMMENT

Honourable Joseph A. Ghiz
(Premier of Prince Edward Island)

- "First Ministers have for years tried to recognize the historic and sociological fact of Quebec's distinctiveness as a statement in the Constitution. That has been achieved in the Accord as an interpretative clause which takes nothing away from the effectiveness of the Charter of Rights but which provides the courts, in cases of ambiguity, some guidance on how provisions of the Constitution are to be understood and applied in law."

"The reference to distinctiveness is an interpretative clause and as such does not confer power. It is subordinate to the Charter which means that any legislation that comes about, having to do with distinctiveness, is subject to charter review. For that reason, there is general and widespread acceptance in the analysis of constitutional experts and social scientists that the distinct society provision is a balanced and constructive statement, serving the interests of Quebec and of Canada." (Address to the Institute of Island Studies, April 11, 1988)

Honourable Ian Scott
(Attorney-General of Ontario)

- "We don't perceive, frankly, and I spent a lot of time on it both before Meech Lake and since that there's any risk to the equality rights of the handicapped, racial communities, women or indeed men." (CBC Interview, April 17, 1988)

Senator Lowell Murray
(Minister of State for Federal-Provincial Relations)

- "With Quebec's willing assent to the 1982 Constitution Act, we now have a Charter of Rights which fully expresses pan-Canadian values and is accepted as legitimate throughout all parts of the country." (Senate Debates, March 31, 1988, 3055)
- "The Quebec government can already use Quebec's distinctiveness in the context of a section 1 argument of the Charter, and the courts have taken

this into account in rendering their decisions ... The distinct society clause put in the constitution gives Quebec the added assurance that this reality will continue in the future." (Senate Debates, April 21, 1988, 3212)

Honourable Gil Rémillard

(Minister Responsible for Canadian Intergovernmental Affairs)

- "... this [distinct society] provision, with the other parts of the 1987 Constitutional Accord, permits Quebec to recognize and fully consent to the application of the Canadian Charter while ensuring that the latter, like the rest of the Constitution will be interpreted in a manner which takes account of the elements that contribute to making Quebec a society with a distinct character." (Letter of October 5, 1987 to the National Association of Women and the Law)

Senator Mira Spivak

- "Since Quebec is now free to invoke its distinctiveness in arguments before the courts, it is clear that to provide that the Charter should not be interpreted in a manner consistent with Quebec's 'distinct society' would render the clause meaningless and would oblige Quebec to give up something it already has. First Ministers agreed that the 'distinct society' clause of the Accord should operate as an interpretation clause making explicit what has already been implicitly accepted." (Senate Debates, April 20, 1988, 3188)

QUEBEC'S DISTINCT SOCIETY/SEXUAL EQUALITY RIGHTS

TESTIMONY OF WITNESSES: PUBLIC HEARINGS

SPECIAL JOINT COMMITTEE OF THE HOUSE AND SENATE

William Lederman

(Professor Emeritus, Faculty of Law, Queen's University)

"It has been alleged that the proposed Constitutional Accord of 1987 would reduce the effect of the Charter in some vital respects, to the detriment of certain rights and freedoms. I respectfully think this is wrong." (7:26)

"... My point about section 28 [sexual equality] is that it is not an interpretation provision. It sets forth rights and freedoms as such. As far as interpretation is concerned, and as far as substance is concerned, to me it speaks loudly and clearly, and it rides right through." (7:36)

[On the Bill 30 decision]

"I do not know of anywhere else where we have the type of remedy for the protection of a fundamental constitutional provision that 93(3) and 93(4) provide. It is unique situation. This is why I say I just do not believe that Madam Justice Wilson intended to speak generally about plenary powers of legislatures in general. This is a special situation". (7:37)

Yves Fortier, Q.C.

(Former President, Canadian Bar Association),

"I don't see at all how the rule of interpretation to be entrenched in s.2 of the Constitution would supersede the substantive sections of the Charter, including ss.15 and 28". (12:83)

[On the Bill 30 decision]

"... section 93, which was enacted at the time of Confederation, was a very special case indeed because it explicitly provides for distinctions on the basis of religion. In such a special case the distinctions flow from substantive provisions of the Constitution. However, the distinct society clause is merely an interpretative provision. Therefore, in my view, and very humbly, I share Professor Lederman's view: it does not carry with it the power to make any laws. To me that is the sum total of the answer." (12:89)

Ginette Busque

(President, Fédération des Femmes du Québec)

"In the province of Quebec, the respect of women's rights is more and more becoming part of the political culture. As a matter of fact, the progress we have made with regard to the status of women is linked to the concept of a distinct society." (13:44)

"As to the relationship between the implementation of the Accord and equality rights, we have been unable to conclude that the Accord poses any particular danger. We want our rights to be respected, and we do not think that the struggles we have engaged in to date will lose their meaning once the Accord is ratified". (13:48)

Francine McKenzie

(President, Conseil du Statut de la Femme, Government of Quebec)

"From the technical or legal point of view, with respect to the preservation of the equality right recognized in sections 15 and 28 of the Canadian Charter of Rights and Freedoms, I must say that the fears expressed to you do not strike us as being justified." (15:81)

"There is no doubt that the concept covers basic elements such as the aim of ensuring equality between men and women, which is already recognized in Quebec. Over the past 25 years Quebec policies have reflected this principle to such an extent that it can be said that they are an inherent part of the distinct society of Quebec." (15:82)

"The Council believes that the introduction of an additional notwithstanding clause with respect to equality rights in the Accord would be superfluous and might even weaken the scope of Section 28 of the Canadian Charter of Rights and Freedoms." (15:83)

NOTE: The position of both Quebec women's groups above was subsequently endorsed by the Provincial Council of University Women's Clubs (Quebec) in a letter from its President, Marie C. Morin to the Prime Minister dated November 20, 1987.

Edward McWhinney Q.C.

(Professor, Simon Fraser University)

"I do not have any great fear that the distinctness of Quebec society will produce a 19th-century, paternalistic, regressive society. I think it is quite the other way. The children of the Quiet Revolution have a head start, in terms of new ideas, on those who did not go through the revolution." (15:68)

ONTARIO SELECT COMMITTEE ON CONSTITUTIONAL REFORM

Peter Leslie

(Director, Institute of Intergovernmental Relations,
Queen's University)

- "... the Langevin text has been said to put other groups at risk. By far the most strongly articulated and political powerful objections along these lines have been those expressed by women's organizations.

What is needed here is a sense of proportion. It is hard to regard the risk as significant. The distinct society clause does not supplant any part of the Charter; as an interpretation clause, it can be called into play only when there is conflict between two or more other clauses in the constitution, for example between the non-discrimination rights in section 15, and section 1, which reads: 'The Canadian Charter of rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society'! The 'distinct society/linguistic dualism' clause may have the effect of broadening the application of section 1; but it would be wrong to view this as interfering in any fundamental way with Charter rights. A vague phrase like 'distinct society' simply does not stand up against a categorical statement like, 'the rights and freedoms referred to in it [the Charter] are guaranteed equally to male and female persons'." (Submission to the Committee, p. 10)

Honourable Ian Scott

(Attorney General of Ontario)

- "In my opinion, there is no connection between Quebec's distinctiveness and discrimination against women, such that the one would have to be weighed against the other. The Constitutional Accord will not compromise the equality of women, either in Quebec or anywhere else in Canada. The guarantees of equality rights for women were explicitly established by sections 15, 28 and 35(4) of the Constitution Act, 1982." (Submission to the Ontario Select Committee, May 4, 1988, p.2)

HIGHLIGHTS OF COMMITTEE REPORTS

SPECIAL JOINT COMMITTEE OF THE HOUSE AND SENATE

- "We do not believe that the entrenchment of this clause will in any realistic way erode the present constitutional protections of individual rights, including gender equality rights." (p. 56)
- "As matters now stand, the "linguistic duality/distinct society" rule will not override gender equality rights or vice versa. They will be read together, along with other constitutional values, in any Charter analysis by the court under section 1." (p. 66)
- "Two of the major women's groups in Quebec, including La Fédération des Femmes du Québec, told the Committee that they do not share the fears expressed by the national women's groups. The Joint Committee places great weight on the testimony of these Quebec women. They should know better than anyone what the distinct society is all about. They live in it." (p. 144)
- "... The main concerns about possible negative effects of the "linguistic duality/distinct society" rule of interpretation on Charter rights in general, and gender equality rights in particular, are in fact concerns about the use of these factors in section 1, then they are less directed to the 1987 Constitutional Accord than to the Constitution Act, 1982..." (p. 66) Section 33 of the Charter... enables Parliament or a provincial legislature to pass a law that overrides important provisions of the Charter including section 2 ("fundamental freedoms") and sections 7 to 15 ("legal rights" and "equality rights") for renewable periods of 5 years. This was a controversial measure at the time it was put into the Constitution in 1982. It should be looked at again." (pp. 144-45)

DEBATES IN THE HOUSE OF COMMONS/PROVINCIAL LEGISLATIVE ASSEMBLIES

HOUSE OF COMMONS - FIRST DEBATE

The Honourable Edward Broadbent
(Leader of the New Democratic Party)

- "We in my Party do not believe that the linguistic duality-distinct society interpretation clause abrogates, supersedes, or overrides sexual equality rights or any other rights guaranteed by the Charter of Rights and Freedoms." (House of Commons Debates, October 21, 1987, 10243)

HOUSE OF COMMONS - SECOND DEBATE

Pauline Jewett
(New Democratic Party Member: New Westminster-Coquitlam)

- "The key section of the Charter, Section 15 dealing with non discrimination on the basis of race or sex, and section 15(2) providing for affirmative action for disadvantaged groups, remain intact and will continue to exist without any effect from the Meech Lake Accord." (House of Commons Debates, May 19, 1988, 15650)

ACADEMIC COMMENT

Nicole Duplé

(Professor, Faculty of Law, Laval University)

- "None of the arguments put forward by women opposing Article 2 has weakened my conviction that this clause will have no affect on sexual equality rights." (Translation - Paper presented at a symposium of the Constitutional and Civil Rights Section of the Canadian Bar Association - Quebec Division - on the Meech Lake Accord, November 14, 1987, p. 3)

RECENT POLITICAL COMMENT

Senator Lowell Murray

(Minister of State for Federal-Provincial Relations)

- "Aboriginal and multicultural provisions of the Charter were included in clause 16 of the Accord because they are interpretation clauses, like the 'distinct society' clause and the 'linguistic duality' clause, and because they also share with those clauses a linguistic and cultural dimension. It would have been illogical to have added the sexual equality rights provision of the Charter to clause 16, as some now suggest, because they share none of these characteristics with either the multicultural and aboriginal provisions of the Charter or the proposed new 'linguistic duality - distinct society' clause." (Senate Debates, March 31, 1988, 3050)

Honourable Gil Rémillard

(Minister Responsible for Canadian Intergovernmental Affairs)

- "...the provision respecting the recognition of Quebec's distinctiveness is not intended, nor has the effect, of jeopardizing the equality of the women of Quebec and their rights, nor does it authorize Quebec to adopt legislative measures which could constrain the men and women of Quebec in the exercise of the rights and freedoms guaranteed by the Canadian Charter." (Letter of October 5, 1987, to the National Association of Women and the Law)

QUEBEC'S DISTINCT SOCIETY

TESTIMONY OF WITNESSES: PUBLIC HEARINGS

SPECIAL JOINT COMMITTEE OF THE HOUSE AND SENATE

Honourable J.W. Pickersgill

(Former Federal Cabinet Minister, Secretary to the PM and Secretary to the Cabinet)

- "If I read the accord correctly, the Langevin version, that distinct society is not exclusively French-speaking. That distinct society includes in that clause the English-speaking minority and its rights. When they are asked to promote the distinct society, there is an equal obligation to promote that aspect of it with the position of the majority." (10:125)

Honourable Robert Stanfield

(Former Premier of Nova Scotia and former Leader of the Opposition)

- "I cannot see anything in the Accord that puts us on a slippery slope towards two nations. True, the accord, if it is fully implemented, becomes part of the Constitution of this country. It is true it recognizes something special about Quebec - not for the first time by the way - and a role for Quebec in connection with that identity. But it is a very limited thing. There are no specific powers given to Quebec in that connection. I find it very difficult to see how that puts the country on any kind of a slope, and I do not have any difficulty living with that degree of asymmetry in the Constitution.
- On the other hand, I think we have been on a very slippery slope. If the accord that has been negotiated is rejected, I think we are on a very slippery slope indeed. To me, that is the slippery slope we should be watching." (5:112)

ONTARIO SELECT COMMITTEE ON CONSTITUTIONAL REFORM

James C. Simeon

(Assistant Professor, Department of Political Science,
University of Western Ontario)

- "To say that the Meech Lake Accord is the thin edge of the wedge for Quebec separatism is to ignore the existing status quo which is, far more unacceptable in this respect." (Submission to the Ontario Select Committee, p. 7)

Richard Simeon

(Director, School of Public Administration, Queen's University)

- "My own feeling is that the recognition of Quebec as a distinct society we find in the Accord -- and that, of course, has been the sine qua non for all Quebec governments in modern times -- is the very minimum that we could have expected from any conceivable Quebec government, this one or any other. It is really less than any modern Quebec government has sought, so I think to say no to Meech Lake -- at least in its general outline ... is to say no to Quebec." (March 22, 1988)
- "I have long thought it essential to provide some recognition of Quebec as a distinct society. It seems to me that is not only a sociological but also a legal reality in this country." (March 22, 1988)

Honourable Ian Scott

(Attorney General of Ontario)

- "[The] recognition of the distinctiveness of Quebec has been a cornerstone of our political practice and our constitutional law since the Quebec Act of 1774. One need only look to the special provisions dealing with the province of Quebec in the British North America Act of 1867 to grasp the fundamental way in which the distinctiveness of Quebec has shaped our constitutional tradition." (Submission to the Ontario Select Committee, May 4, 1988, pp.4-5)

Honourable Jean-Luc Pépin

(Former federal Cabinet Minister, Co-chairperson on
Pépin-Roberts Task Force on Canadian Unity)

- "The distinctiveness of Quebec is not an invention of the Meech Lake Accord. It is only the formal recognition of something which has existed for a long time and which Canadian historians and politicians have recognized for 125 years."
(March 23, 1988)

HIGHLIGHTS OF COMMITTEE REPORTS

SPECIAL JOINT COMMITTEE OF THE HOUSE AND SENATE

- "In the Committee's view ... the limited recognition given by the proposals to the "distinct society", and the assignment of a role to the Quebec government to "promote" its distinct identity, are appropriate values to be reflected explicitly rather than implicitly in the Constitution. Insofar as the "linguistic duality" and "distinct society" clauses are statements of fact they are neither revolutionary nor particularly innovative. They reflect Canada as it is." (p. 39)
- "Most witnesses were of the view that the earlier language of the Meech Lake Accord could have been misinterpreted as approval of "two Canadas" and the change in language was generally considered to be an important improvement." (p. 49)
- "The Joint Committee accepts the advice that the "linguistic duality" clause is a constitutional step in the right direction for French-speaking minorities outside Quebec and that in law the "distinct society" clause is unlikely to erode in any significant way the existing entrenched constitutional rights of the English-speaking minority within Quebec." (p. 51)

PRINCE EDWARD ISLAND: SPECIAL COMMITTEE OF THE LEGISLATURE ON THE 1987 CONSTITUTIONAL ACCORD

- "In the historical and cultural context of Quebec society the reference to distinctiveness is therefore important in restoring some of the legal balance thought necessary for that society's survival within Canada and North America. This interpretative reference therefore is the minimum that would be acceptable for Quebec." (p. 4)

DEBATES IN THE HOUSE OF COMMONS/PROVINCIAL LEGISLATIVE
ASSEMBLIES

HOUSE OF COMMONS - FIRST DEBATE

The Right Honourable John Turner

(Leader of the Opposition)

- "We nonetheless state our support, of course, for the distinct character of Quebec. We do not believe this is a revolutionary concept. We believe we are merely confirming in this Chamber the reality. Quebec does have a distinctive character. Quebec is the only province where French is the language of the majority. There is a different system of law, a unique psychology and a unique history. I do not believe that recognizing that fact in the Constitution is dangerous. I do not believe it will lead to special status or sovereignty association or "le concept de deux Nations." I believe it is a historical and cultural fact that should be recognized." (House of Commons Debates, September 29, 1987, 9430)

DEBATES IN HOUSE OF COMMONS/PROVINCIAL LEGISLATIVE
ASSEMBLIES

QUEBEC

Honourable Gil Rémillard

(Minister responsible for Canadian Intergovernmental
Affairs)

- "The recognition in the constitution that this country, Canada, is based on two founding peoples, two national communities, English-speaking Canadians and French-speaking Canadians, two equal peoples who represent what we call the application of the principle of the Canadian duality. And it is a concept that we have recognized in Quebec for a long time. It is a concept that is clear to us, that we have long wished to have recognized in the Canadian constitution and that has been the object of numerous debates. It is a reality now."
(National Assembly Debates, June 19, 1987, 8783-84) [Unofficial translation]

NOVA SCOTIA

Honourable John Buchanan

(Premier of Nova Scotia)

- "The existence of the French and English languages inside and outside of Quebec has always been a characteristic of Canada. And ... Quebec has its own civil code of laws as opposed to the common law of the other provinces of Canada, cultural and educational traditions which you don't find in other parts of Canada, and by reflecting this reality the Accord only mirrors the reality of Canada for many, many years". (Legislative Assembly Debates, March 1, 1988, 180)

NEWFOUNDLAND

Honourable Brian Peckford

(Premier of Newfoundland)

- "[The distinct society/linguistic duality provisions] are added as interpretive clauses and do not alter the distribution of powers between the federal and provincial orders of government".
(House of Assembly Debates, March 17, 1988, p. 187)

OFFICIAL LANGUAGE MINORITIES

TESTIMONY OF WITNESSES: PUBLIC HEARINGS

SPECIAL JOINT COMMITTEE OF THE HOUSE AND SENATE

Robert Décary

(Constitutional lawyer)

- "The French fact is also acknowledged in Canada... Outside Quebec, the French way of life becomes a fundamental characteristic of Canada, and both federal and provincial governments are having the role of protector conferred upon them. For francophones outside Quebec, this is an important gain, not only symbolically, but also in practical terms. Henceforth, the Constitution, and therefore, also the Charter, and thus language and education rights will have to be interpreted in such a way as to ensure the protection of francophones. This is certainly not yet enough, but it does represent some progress...
- I take issue with those who fear an erosion of the rights of the English-speaking minority in Quebec. The agreement is decidedly within a federalist context, a context in which Quebec, from the outset, accepts this fundamental characteristic of Canadian duality, even on its own territory. The linguistic and educational guarantees of the English-speaking minority are retained." (4:64)

Solange Chaput-Rolland

(Political commentator, Commissioner Pepin-Robarts Task Force on Canadian Unity)

- "Just think how much more [the role to preserve linguistic duality] is than what there was 50 years ago. It is tremendous progress.
- You would like to add the words 'protéger et promouvoir'. No provincial premier will accept that. You are stepping into areas of provincial jurisdiction...Do not forget that those discussions took place between provincial premiers, not principal secretaries or legal advisers; between people who live with it.
- So for me, the farthest the Meech Lake agreement could go is probably to say 'le Québec fera la protection et la promotion' and the provinces will 'protéger' and 'promouvoir' later. They are not yet ready." (13:20)

ONTARIO SELECT COMMITTEE ON CONSTITUTIONAL REFORM

Honourable Ian Scott
(Attorney General of Ontario)

- "Meech Lake recognizes the distinctiveness of Quebec society and the role of the Government of Quebec in promoting that distinctiveness. But the Accord also recognizes the presence of the English-language minority in Quebec and the French-language minorities in the other provinces and affirms the constitutional obligation of all governments, including the Governments of Quebec, to preserve those minorities ... Moreover, the signing of the Meech Lake Accord by the Government of Quebec affirms the legitimacy within the province of the minority language guarantees contained in the Charter of rights. (Submission to the Ontario Select Committee, May 4, 1988, pp. 7-8)

HIGHLIGHTS OF COMMITTEE REPORTS

SPECIAL JOINT COMMITTEE OF THE HOUSE AND SENATE

- "Amending the Constitution to include an explicit and unanimous acknowledgement of Canada's "linguistic duality" across the country is, in the Joint Committee's view, a major achievement." (p. 50)
- "The Joint Committee accepts the advice that the "linguistic duality" clause is a constitutional step in the right direction for French-speaking minorities outside Quebec and that in law the "distinct society" clause is unlikely to erode in any significant way the existing entrenched constitutional rights of the English-speaking minority within Quebec." (p. 51)
- "Representatives of French-speaking Canadians living outside Quebec made out a very strong case that not only should their "presence" be preserved but that the Constitution should affirm the role of all governments to promote linguistic duality in all of the provinces and territories. We believe that this is an important matter that should be put back on the First Ministers' agenda at an early date." (p. 140)

PRINCE EDWARD ISLAND: SPECIAL COMMITTEE OF THE LEGISLATURE ON THE 1987 CONSTITUTIONAL ACCORD

- "Your Committee notes the view expressed by the Societe Saint Thomas d'Aquin, and supported by other Acadian representatives, that what has been achieved by use of the word 'preserve' is a step in the right direction. Further, it is their view that what has been achieved should be kept by accepting the Accord as it is; it is their understanding of the situation that the Accord would not survive an amendment at this time."

ONTARIO SELECT COMMITTEE ON CONSTITUTIONAL REFORM

- "While we recognize that Quebec is legally bound by the Charter, the day the rest of the country cements the Accord with Quebec and resolves the constitutional impasse, will be the day Quebec willingly accepts the Charter of Rights and Freedoms as its own. This represents an important development for official language minority rights. This is surely a significant accomplishment." (p. 9)

DEBATES IN THE HOUSE OF COMMONS/PROVINCIAL LEGISLATIVE ASSEMBLIES

HOUSE OF COMMONS - FIRST DEBATE

The Right Honourable Brian Mulroney
(Prime Minister)

- "In voting for this Accord, Members are upholding the rights of our language minorities, English-speaking in Quebec and French-speaking outside Quebec." (House of Commons Debates, October 21, 1987, 10246)

The Honourable Edward Broadbent
(Leader of the New Democratic Party)

- "We in my Party do not believe that the linguistic duality-distinct society interpretation clause abrogates, supersedes, or overrides sexual equality rights or any other rights guaranteed by the Charter of Rights and Freedoms." (House of Commons Debates, October 21, 1987, 10243)

HOUSE OF COMMONS - SECOND DEBATE

The Right Honourable Brian Mulroney
(Prime Minister)

- "As for our official language minorities, English-speaking in Quebec and French-speaking in the rest of Canada, we have affirmed not only their vital presence but the role of the provinces to preserve their rights. This is in addition to minority rights entrenched in the Charter. These are first-class Canadian citizens with full Canadian citizenship wherever they live. The role of the federal Parliament and the Government of Canada to protect minority rights at all times wherever those minorities live remains a moral and a legal obligation of the Government of Canada." (House of Commons Debates, June 14, 1988, 16407)

The Honourable Edward Broadbent

(Leader of the New Democratic Party)

- "Under the Meech Lake Accord, the Government of Saskatchewan and the other provincial governments will be required to preserve linguistic minorities. Given the pressures of the media, culture and assimilation that threaten them, preservation of these minorities requires more than the passive support of the provinces." (House of Commons Debates, June 14, 1988, 16416)

Honourable Robert Kaplan

(Liberal Member-York Centre)

- "Those who would argue that the distinct society clause could be used as a device to downgrade or humiliate the English-speaking minority within the Province of Quebec are not giving adequate account of the actual language of the Meech Lake Accord and to the fact that such action would not be justified under the very clear language which indicates that Quebec is a bilingual society which includes francophones and anglophones." (House of Commons Debates, May 19, 1988, 15642)

Pauline Jewett

(New Democratic Party Member: New Westminster-Coquitlam)

- "If Meech Lake were already in effect, it is our firm belief that that limiting action of the Saskatchewan Government would have been declared contrary to the Constitution as amended by Meech Lake." (House of Commons Debates, May 19, 1988, 15647)
- "... we have also realized over the last several months that many of the naysayers on Meech Lake, including the former Prime Minister, Pierre Elliott Trudeau, are effectively saying that two linguistic Canadas are being created by Meech Lake, French in Quebec, English everywhere else. Time and time again in the past several months, we have heard this. It would seem to me that those who keep saying this have simply not read the new Section 2 of the Constitution embodied in this Accord. Above all, they have not read that the duties of the provincial legislatures to preserve linguistic duality are duties that are shared and must be shared just as much by the legislature of Quebec as by any other legislature." (House of Commons Debates, May 19, 1988, 15648)

SASKATCHEWAN

Honourable Grant Devine
(Premier of Saskatchewan)

- "This [linguistic duality] provision, in my view, is a fair and a reasonable one. It has the very important consequence of not making the province of Quebec the sole protector of the French language in Canada. This was introduced into the amendment in order to protect the interests of French language minorities living outside of Quebec. It also has the effect of assuring the protection of the English language minority living within the province of Quebec." (Saskatchewan Hansard, July 9, 1987, 1050).

PRINCE EDWARD ISLAND

Honourable Joseph A. Ghiz
(Premier of Prince Edward Island)

- "I would want to recognize the criticisms of some who say that Governments should be required to 'promote' the characteristic of duality. The fact is, Mr. Speaker, consensus could not be reached on this matter. In addition, critics who want a stronger obligation on Governments should recognize that preserving duality is a major gain from what had existed and is a good base for building in additional obligations should they be required." (April 5, 1988)

ONTARIO

Honourable Ian Scott
(Attorney-General of Ontario)

- "The clause is finely balanced. It recognizes the existence of the English-speaking minority in Quebec and the French-speaking minorities in other provinces and affirms the role of governments in preserving those minorities." (Ontario Hansard, November 25, 1987, 551)

ACADEMIC COMMENT

William Tetley

(Professor of Law, McGill University)

- "But most legal experts have not found any danger to English Quebecers arising from the concept of a distinct society which, incidentally, reads in full contents "the recognition that Quebec constitutes within Canada a distinct society." Besides, English Quebecers are included in that society because we were here at the time of its definition." ("I back Alliance view of Quebec: Tetley", The Gazette, January 13, 1988, p. B3)

Peter Hogg

(Professor of Law, Osgoode Hall Law School, York University)

- "There would be general agreement that, as a matter of fact, Quebec constitutes within Canada a "distinct society". It is not, however, easy to define the characteristics that make Quebec distinct, and the Accord makes no attempt to do so. The most obvious one is the existence of a French-speaking majority: Quebec is unique among the provinces in that respect. However, Quebec is not an exclusively French-speaking society: there is a substantial English-speaking minority. The presence in Quebec of the English-speaking minority is expressly recognized by s. 2(1)(a), and the role of the Quebec Legislature in preserving that minority is affirmed by s. 2(2). It is plain, therefore, from the text of s. 2 that Quebec's distinct society is one in which French and English coexist." (Peter Hogg, Meech Lake Constitutional Accord, Carswell, 1988, p.12)

RECENT POLITICAL COMMENT

Senator Lowell Murray

(Minister of State for Federal-Provincial Relations)

- "To suggest, as some have, that the constitutional recognition of our linguistic duality as a fundamental characteristic of Canada will divide the country, as opposed to bilingualism, which unites us, is to set up a false dichotomy. Past and future policies and programs of bilingualism in Canada were premised on the incontrovertible fact of our linguistic duality.

Another false dichotomy ... is the contention by some people that there is some inherent contradiction ... in the concept of a bilingual federal Canada, on the one hand, and the recognition of Quebec's distinctiveness on the other. Today's leaders, and , in my opinion, most Canadians accept that both linguistic duality and Quebec's distinctiveness are essential and cherished elements of our national identity." (Senate Debates, April 18, 1988, 3075)

- "[Witnesses] before the committee [of the whole], and others, have suggested that the Meech Lake Accord jeopardizes the constitutional rights of English-speaking Quebecers. The clause recognizing Quebec's distinct society is an interpretation clause and it neither creates governmental powers nor overrides substantive rights such as minority language rights in the Charter. Nothing alters section 133 of the Constitution Act, 1867 ... or section 23 of the Charter ... Under the Accord English-speaking Quebecers are explicitly recognized as an integral part of Canada's linguistic duality. All legislatures, including Quebec's, will have their role in preserving that duality." (Senate Debates, March 31, 1988, 3050)

OTHER RECENT COMMENT

D'Iberville Fortier

(Commissioner of Official Languages)

- "[The] Meech Lake Accord reaffirmed the fundamental importance of Canada's linguistic duality and brought with it the hope that Quebec would, once again and by general consent, be part of the constitutional fold. How otherwise could we speak of a united Canada? Despite its imperfections, the Accord is a major step in the right direction." (Annual Report 1987, i)
- "The spirit of Meech Lake and of Bill C-72 on official languages seems to be bearing fruit even before it is adopted." (News Release, Statement by the COL on the agreements between the Government of Canada and the Government of Saskatchewan, June 15, 1988)
- "Our own position is that from a linguistic standpoint, we think that the provisions do represent a step forward." (Daily Gleaner, May 4, 1988)
- "There is in this Accord a constitutional guarantee to protect linguistic minorities which did not exist before. I rejoice in that." (Translation - Le Matin, June 9, 1987)

Max Yalden

(Commissioner for Human Rights, former Commissioner of Official Languages)

- "In terms of language, I can't see that it [the Accord] will enable any Quebec [government] to downgrade the status of English in Quebec or any government outside Quebec insofar as they have greater devolution of powers to them to downgrade French." (CBC Interview, April 26, 1988)

1

MULTICULTURALISM

TESTIMONY OF WITNESSES: PUBLIC HEARINGS

SPECIAL JOINT COMMITTEE OF THE HOUSE AND SENATE

Honourable Gordon Robertson

(Former Secretary to the federal Cabinet)

- Are the proposed arrangements damaging to other fundamentals of the Canadian Constitution: the Charter of Rights, various protections for groups such as the aboriginals, multicultural groups, and that kind of thing? I cannot see that the accord is damaging in those senses." (3:77)

Robert Décary

(Constitutional lawyer)

- "I am aware that the agreement does not meet the expectations of native peoples, francophones living outside Quebec, women, ethnic groups of certain regions, indeed, of certain provinces. I say to these people, these groups, these regions that they must not put the cart before the horse. The process has only begun. It can go nowhere unless Quebec becomes a full-fledged member of the Canadian family. First and foremost, we must ensure that Canada becomes pan-Canadian and federal once more." (4:65)

Richard Simeon

(Director, School of Public Administration, Queen's University)

- "The committee and the groups involved should recognize that no single set of changes will capture all the interests seeking constitutional recognition, or restate all the commitments we have made before ... This document is about bringing Quebec in and about establishing a better balance between federal and provincial governments. I think it does that well." (5:74)

ONTARIO SELECT COMMITTEE ON CONSTITUTIONAL REFORM

Honourable Ian Scott
(Attorney General of Ontario)

- "Section 16 of the Accord ensures that, even though the Meech Lake Accord makes explicit reference to French-speaking and English-speaking Canadians, and recognizes the distinctiveness of Quebec society, the rights guaranteed by the Charter will continue to be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canada." (Submission to the Ontario Select Committee, May 4, 1988, p.28)

HIGHLIGHTS OF COMMITTEE REPORTS

SPECIAL JOINT COMMITTEE OF THE HOUSE AND SENATE

- "The Joint Committee fully agrees with the vital importance of our multicultural heritage but we do not share the concerns expressed with regard to the omission from section 2 of any mention of multiculturalism. Section 2(1)(a) does not purport to offer a comprehensive definition of Canada. It is, as we have indicated, an articulation of one of the fundamental characteristics of Canada. Had First Ministers attempted to formulate a comprehensive definition that captured all of the fundamental characteristics of Canada they would have gone far beyond their agenda of dealing with amendments necessary to enable the government of Quebec to give its willing assent to the Constitution." (p. 52)
- "Section 16 counters any possible implication that recognition of linguistic duality and the distinct society as interpretative principles would be capable of compromising the continuing status of Canada's multicultural heritage as another interpretative principle." (p. 52)
- "We do not believe that adoption of the "linguistic duality/distinct society" rule of interpretation will transform our cultural mosaic into a melting pot and we would not recommend rejecting the 1987 Accord because its framers did not go beyond their agreed upon agenda to give multiculturalism the prominence it may one day achieve." (p. 53)

DEBATES IN THE HOUSE OF COMMONS/PROVINCIAL LEGISLATIVE ASSEMBLIES

Bob Rae

(Leader of the Ontario Opposition)

- "I speak as one who feels very strongly that the multicultural and multiracial character of our country should be expressed in the Constitution, but I feel the best way for that to be achieved is for us to have the willing participation of the government of Quebec here. Then that will be not easy but, I suggest, more possible." (Ontario Hansard, June 29, 1988, 4853)

ACADEMIC COMMENT

Nicole Duplé

(Professor, Faculty of Law, Laval University)

- "In my opinion, the distinct society referred to in article 2 would not preclude the existence of cultural sub-groups founded on other factors than the English or French language." (Translation - Paper presented at a symposium of the Constitutional and Civil Rights Section of the Canadian Bar Association - Quebec Division - on the Meech Lake Accord, November 14, 1987 p. 8)

RECENT POLITICAL COMMENT

Senator Lowell Murray

(Minister of State for Federal-Provincial Relations)

- "[You] have ... been told the Accord should have contained a better constitutional acknowledgement of multiculturalism. I must recall that the purpose of this round of constitutional discussions was to bring Quebec back into the constitutional fold, not to eliminate the other alleged flaws of the 1981 Accord ... [The] Section 2 acknowledgement of the distinct character of the Quebec society is in addition to the other constitutional acknowledgements in the Constitution Act, 1982, particularly that of Section 27 pertaining to our multicultural heritage" (Senate Debates, March 31, 1988, 3054)

FEDERAL POWERS

TESTIMONY OF WITNESSES: PUBLIC HEARINGS

SPECIAL JOINT COMMITTEE OF THE HOUSE AND SENATE

Honourable Gordon Robertson

(Former Secretary to the federal Cabinet)

- "Another question is whether the agreement weakens the federal government in any significant and important way. Here one has to note that the Accord does not change the distribution of powers in any way; nothing is changed in sections 91, 92 and 93.
- During the constitutional negotiations in 1968 to 1971 and later up to 1979, it was fully expected that there would be changes in the distribution of powers. Quebec sought a number of changes in the distribution of powers. This Accord does not change that distribution in any way." (3:77)

Peter Leslie

(Director, Institute of Intergovernmental Relations, Queen's University)

- "The key point here then, with reference to the question of how much power Ottawa has given up, is that in these processes of negotiation the federal government has in my view retained its powers of action. It will be looking for co-operation, but it still has the powers needed to play hard ball with the provinces if it has to. I do not want to stress that, because what is aimed for here is a new and a better working relationship, but the powers are there to be exercised through a process of negotiation should the need arise." (4:101)

Richard Simeon

(Director, School of Public Administration, Queen's University)

- "Fears that we have hamstrung the federal government, rendered it impotent and unable to lead, are simply grossly exaggerated. They seem to me to be based on a view of the country that it is or should be a unitary state with unlimited federal power." (5:72)

DEBATES IN THE HOUSE OF COMMONS/PROVINCIAL LEGISLATIVE ASSEMBLIES

HOUSE OF COMMONS - FIRST DEBATE

The Right Honourable John Turner

(Leader of the Opposition)

- "Having carefully examined the contents of the Accord reached by the First Ministers, I believe the Canadian Government is maintaining its leadership role within the Confederation." (House of Commons Debates, September 29, 1987, 9429)
- "One area that I looked at specifically in gauging my own reaction to the Constitutional Accord, and in this respect there has been a distinct improvement in the Accord over the original agreement at Meech Lake, was that it spells out specifically that nothing in it alters the relative division of powers as between the federal and provincial Governments." (ibid, 9431)

The Honourable Edward Broadbent

(Leader of the New Democratic Party)

- "... we do believe it is imperative in a nation as diverse as ours, culturally, economically and regionally, that we have a federal Government that has very substantial powers, a very real capacity to deal with national and international problems. We have assessed the Accord from within this particular social democratic framework as well. We find that it is quite consistent with our principles." (House of Commons Debates, October 21, 1987, 10241)
- "... in Section 91 of the Constitution there are some 29 specific, unique, exclusive federal powers. I repeat that they have not been altered one whit. They are there to be used by any Government that wishes to show effective national leadership." (ibid, 10241)
- "I wish to say to those Canadians who have listened to arguments on the other side that the powers of the national Government of Canada have not been reduced one iota by this constitutional Accord." (ibid, 10241)

HOUSE OF COMMONS - SECOND DEBATE

The Honourable Edward Broadbent
(Leader of the New Democratic Party)

- "... the federal authority to provide leadership in great national issues in the country remains as strong today and will remain as strong after Meech Lake as all Canadians desire it to be." (House of Commons Debates, June 14, 1988, 16415)

"... the Accord does not change the division of powers one iota as they are outlined in Section 91 and 92 of the Constitution Act." (ibid, 16415)

- "While giving the provinces a say in a very limited range of federal institutions, it retains for the federal Government the great subjects of legislation that John A. Macdonald wanted and that subsequent federal Governments have used to build railroads, the Trans-Canada Highway, the St. Lawrence Seaway, and to create a vast public transportation system. It retains the power the federal Government used to help create a system of social services that is among the very best in the world." (ibid, 16416)

ONTARIO

Honourable Ian Scott
(Attorney-General of Ontario)

- "Nothing in the accord diminishes the legislative power of Parliament. All existing federal powers remain intact and untouched under the accord." (Ontario Hansard, November 25, 1987, 551)

Bob Rae
(Leader of the Official Opposition, Ontario)

- "I do not share the view that the accord somehow dramatically weakens federal power." (Ontario Hansard, November 25, 1987, 556)

ACADEMIC COMMENT

Jim de Wilde

(Professor of Business Administration, University of Western Ontario)

- "There are aspects of the Meech Lake process which could lead to a strengthening of the federal power. By creating a moment of national reconciliation, it has provided an opportunity for any federal government concerned with promoting national interests to embark on a new public policy agenda. After all, what would the de facto federal power be if the Meech Lake process had resulted in failure? What would the de facto federal power be if Quebec were constitutionally isolated, if a federalist government in Quebec had failed to constitutionalize Quebec's distinct interests and Canada were still stuck on yesterday's constitutional agenda." ("Meech Lake, in Itself, Will not Weaken Charter", London Free Press, October 26, 1987)

Rodrique Tremblay

(Professor, Department of Economics, University of Montreal)

- "Contrary to what some believe, the constitutional reform of Meech Lake does not lead to an increased decentralization of the Canadian federation. On the contrary, its principal provisions aim rather to avoid a rampant centralization in a multitude of domains, to this point considered to fall within provincial competence." (translation - Le Devoir, June 16, 1988)

CREATION OF NEW PROVINCES

TESTIMONY OF WITNESSES: PUBLIC HEARINGS

SPECIAL JOINT COMMITTEE OF THE HOUSE AND SENATE

Honourable Gordon Robertson

(Former Secretary to the federal Cabinet)

"I myself do not consider that [unanimity] is important at all." (3:83)

Robert Décary

(Constitutional lawyer)

- "It strikes me as healthy, understandable and desirable that unanimity be required. The agreement of the smallest province as well as the largest would be required before the structure of the composition of the country was altered. A federation is a contract whose basic components cannot be altered without the consent of each of the parties. No province must ever again find itself in the state of isolation in which Quebec is today." (4:63)
- "In April, I told myself: unanimity is not impossible, we have just seen an example of it. And we saw another example on June '31. Is unanimous consent really that disastrous within a federation which, according to me, is a contract, no matter what the size of the province? If, when the small province signed the contract, it was aware of the fact that this was an agreement involving 10 parties, I think it should be consulted before a province is added or dropped." (4:74)

Peter Leslie

(Director, Institute of Intergovernmental Relations, Queen's University)

- The "changes made are the least rigid of the options before us." (4:101)

Richard Simeon

(Director, School of Public Administration, Queen's University)

- In "most areas the existing 7/50 rule for amendments will still apply and the opting out provision does reduce the likelihood that one province will be able to scuttle a shift in the division of powers that is sought strongly by the rest of the country." (5:73)

Honorable Robert Stanfield

(former Premier of Nova Scotia and former Leader of the Opposition)

- "I do not think that what we have today is anything like as strict and rigid as the Fulton-Favreau proposals...I would have to describe it as a very reasonable proposal in comparison with anything I have known in the past." (5:115)

Peter Meekison

(Vice-President of the University of Alberta, former Deputy Minister of the Alberta Department of Federal and Intergovernmental Affairs)

- "The proposed amendment gives every province an equal say. It extends the idea of provincial equality, which is the basic premise underlying the amending formula.
- The proposed unanimity requirement also establishes a different political dynamic than that which operates in the general amending formula. There is no need to form or to seek coalition or alliances when you have a veto. At the same time, it is very difficult to cast a veto when all around you are seeking a change. The dynamics of intergovernmental negotiation generally force governments to look for a compromise solution. That was true in the Meech Lake Agreement, and it has been true in the past.
- The myth that unanimity is impossible to achieve is not substantiated historically. The unemployment insurance amendment of 1940 and the amendments affecting the pensions in 1951 and 1964 are three examples." (10:43)

ONTARIO SELECT COMMITTEE ON CONSTITUTIONAL REFORM

Group of Eleven Academics*

- "Despite the fact that these changes introduce some additional rigidity to an already complex amendment process, we consider that this solution acceptably balances competing views." (Submission to the Select Committee, p. 4)

James C. Simeon

(Assistant Professor, Department of Political Science,
University of Western Ontario)

- "I am persuaded by the argument that for some of the most important amendments to a constitution the consent of all parties is preferable. If past history is a guide then it is possible to reach unanimous agreement on amendment proposals to the constitution." (Submission to the Ontario Select Committee, p. 10)

Honourable Ian Scott

(Attorney General of Ontario)

- "[It] is expected that the provisions for unanimity will not diminish the likelihood of future provincehood for the northern territories. An important advantage of unanimity is that it protects the territories from any expansion of the existing provinces at the expense of the territories." (Submission to the Ontario Select Committee, May 4, 1988, p. 77)

* Keith Banting, Queen's; Thomas J. Courchene, York; William R. Lederman, Queen's; Peter M. Leslie, Queen's; Kenneth McRoberts, York; John Meisel, Queen's; Peter Russell, University of Toronto; Richard Simeon, Queen's; Donald Smiley, York; Hugh G. Thorburn, Queen's; and Ronald Watts, Queen's

Peter Meekison

(Vice-President of the University of Alberta, former Deputy Minister of the Alberta Department of Federal and Intergovernmental Affairs)

"The proposed amendment gives every province an equal say. It extends the principle of provincial equality which is the basic premise underlying the amending formula. As a result, the idea of provincial equality has been extended beyond the 1981 agreement to become one of the cornerstones of the Meech Lake agreement. Provinces are treated alike. There are no first and second class provinces. To Alberta and other provinces in eastern and western Canada, this principle is fundamental."

"The dynamics of intergovernmental negotiation generally force governments to look for a compromise solution. That was true of the Meech Lake agreement and it has been true in the past. The myth that unanimity is impossible to achieve is not substantiated historically." (February 1988)

HIGHLIGHTS OF COMMITTEE REPORTS

SPECIAL JOINT COMMITTEE OF THE HOUSE AND SENATE

- "The Joint Committee is of the view that the proposed changes to the amending formula do not establish any new principles. They carry forward principles established in 1982 in a way that is consistent with both the "equality of the provinces" and a recognition of the stake that each and every province has in the basic elements of the Canadian federation." (p. 127)
- "The federal government seems to agree that the territorial government should take on more and more responsibilities in relation to local matters as circumstances permit until ultimately provincial status is achieved. But when: the real question is one of timing." (p. 117)
- "In their submissions to the Joint Committee both territorial governments conceded that the creation of a new province would:
 - (1) alter the numerical operation of the amendment procedure; and
 - (2) alter fiscal relations among governments" (pp. 117-18).
- "[The territorial representatives'] real problem is with the 1982 amendments not the 1987 amendments." (p. 119).
- "Even the most enthusiastic territorial witness did not suggest that provincehood could be achieved in the near future, even under the 1982 formula or, for that matter, under the 1871 procedure where new provinces sprang into existence on the sole authority of Parliament." (p. 119)
- "We do not believe it would be justified to recommend rejection of the 1987 Constitutional Accord on the basis of the failure of First Ministers to deal with a highly complex matter [i.e. territories' accession to provincehood] that goes well beyond the 1987 Constitutional Accord and that is not ripe for determination." (p. 121)

DEBATES IN THE HOUSE OF COMMONS/PROVINCIAL LEGISLATIVE ASSEMBLIES

SASKATCHEWAN

Honourable Grant Devine
(Premier of Saskatchewan)

- "The fact that each province will have a veto power over the creation of new provinces is quite appropriate, in the light of the effect of new provinces on federalism as a whole. The introduction of new provinces would affect the operation of the amending formula, the arrangements by which some provinces receive equalization payments from the federal government, and a wide variety of other matters which go to the core of how this country operates."
(Saskatchewan Hansard, July 9, 1987, 1051)

ALBERTA

Honourable Don Getty
(Premier of Alberta)

- "The other thing we were able to obtain in this negotiation is a veto for Alberta and all provinces. Again, it is really foolish to argue that we have equal provinces and then propose an accord that would have perhaps the large provinces, like Ontario and Quebec, have a veto and not the small provinces ... We believe again in the equality of provinces; all provinces have a veto if one is going to have one." (Alberta Hansard, November 23, 1987, 2002)

ONTARIO

Honourable Ian Scott
(Attorney-General of Ontario)

- "The class of amendments subject to unanimity involves matters which have important effects on the country as a whole. Further, the Meech Lake process itself is testimony to the fact that unanimity is, as indeed it has been in Canada for 120 years, a workable requirement." (Ontario Hansard, November 25, 1987, 552)

ACADEMIC COMMENT

Tom Courchene

(Robarts Professor of Canadian Studies, York University)

- "Even though the concept is now enshrined in the constitution, the fact remains that introducing a northern province may strain the federal government's ability to finance the increased demands on the equalization formula. This is not an argument against new provinces. Far from it. It is, however an argument that states that three traditional "have" provinces of the federation (Ontario, B.C. and Alberta) ought not to have a veto on new provinces if the three "have-not" Maritime provinces do not have a veto, particularly if the level of equalization payments is at stake." (Robarts Centre for Canadian Studies, Working Paper Series 87-F02, p. 57)

Gerald A. Beaudoin

(Director of the Human Rights Centre and Professor of Law, University of Ottawa, Commissioner on the Pépin-Robarts Task Force on Canadian Unity)

- "The amendment formula has become more complicated, it is true. But one must not exaggerate. While unanimity (of the 11) will be required for changes to national institutions and several other matters, for others the regular amending 7/50 formula will still remain in effect." (Paper presented at a symposium of the Constitutional and Civil Rights Section of the Canadian Bar Association - Quebec division -- on the Meech Lake Accord, November 14, 1987 [unofficial translation])

Peter Hogg

(Professor of Law, Osgoode Hall Law School, York University)

- "...when devolution reaches the stage of full provincial status, the other provinces are profoundly, albeit indirectly, affected. The establishment of new provinces would increase the total number of provinces and thus indirectly affect the operation of the amending formula. Since any direct amendment of the amending formula now requires unanimity (old s. 41(e)), it is arguable that other amendments having the same

effect ought to be subject to the same requirement. Another point is that the establishment of new provinces, especially provinces with sparse populations, large territories and harsh climates, would entail a substantial revision of the federal-provincial financial arrangements. This is another topic upon which unanimity is at least desirable. It follows that a case can be made for the proposition that all existing provinces should agree to the introduction of new provinces." (Peter Hogg, Meech Lake Constitutional Accord, Carswell, 1988, p.49)

RECENT POLITICAL COMMENT

Senator Lowell Murray

(Minister of State for Federal-Provincial Relations)

- "[This] committee and the Task Force on the North heard a great deal about northerners' views on the Accord, particularly the 'new provinces' rule and the Senate and Supreme Court appointments provisions ... Underlying the proposed changes to the amending formula is a conviction that these matters ... are so central to the federation that all provinces should have an equal voice in them." (Senate Debates, March 31, 1988, 3052)

Honourable Joseph A. Ghiz)

(Premier of Prince Edward Island)

- "It is to be noted that, contrary to some claims, the areas requiring unanimity are not much greater than before and concern mostly national institutions. All other amendments are as before and require support of seven provinces with 50% of the population ... [But] in matters affecting the major and fundamental decisions of the country, Prince Edward Island is not a second-class province. Changes in this and other areas contained in the resolution mean that provinces are juridically equal; in this process Prince Edward Island has acquired a stature of which all residents should be proud." (Address to the Institute of Island Studies, April 11, 1988)

SPENDING POWER

TESTIMONY OF WITNESSES: PUBLIC HEARINGS

SPECIAL JOINT COMMITTEE OF THE HOUSE AND SENATE

On establishing new shared-cost programs:

Honourable Gordon Robertson

(Former Secretary to the federal Cabinet)

- "There is no question but that the capacity to act under the spending power will still exist ... I do not find any significant weakening of the federal government." (3:77)

Peter Leslie

(Director, Institute of Intergovernmental Relations, Queen's University)

- "People have been concerned that ... it will no longer be possible for the federal government to undertake a new set of initiatives in social policy and that further progress will be prevented or stymied ... The accord will not have that effect. First of all, it affects only a certain aspect of the spending power, only that part of it to do with national shared-cost programs ... What it will do is to set up a new sort of bargaining process between the federal government and the provinces should new initiatives be taken as are quite possible under the terms of that part of the accord." (4:100-101)

Richard Simeon

(Director, School of Public Administration, Queen's University)

- "The spending power provision I think is the best expression of my own view of how a federal system should operate. On the one hand, and for the first time, it gives explicit recognition to the ability of the federal government to intervene in areas of exclusive provincial jurisdiction in the national interest and in the furtherance of national objectives ... At the same time, the opting-out clause ensures that this power will not be used to subvert the division of powers, and the provinces will be able to vary their programs in accord with local needs.

- Policy-making in Canada is a constant dynamic, it seems to me, both of co-operation and of competition among governments; and, of course, we know it is a constant balancing of national and local needs. It seems to me the provision here sets up exactly the right kind of circumstances, the right kind of incentives, for exactly the sort of debate we want to have in making those kinds of balances."
- I think it might be noted that the 1987 provision on limits to the federal spending power again is the least Draconian of all of the limits on the federal spending power that have been proposed over the years in constitutional discussions. It does not embody, for example, prior provincial approval before a program would go ahead, which has been called for. In focussing tightly on the one instrument, on shared-cost programs in provincial jurisdiction, it leaves untouched the whole range of other federal powers, many of which allow the federal government to influence developments within the provinces.
- Therefore, I believe the fears that we have hamstrung the federal government, rendered it impotent and unable to lead, are simply grossly exaggerated. They seem to me to be based on a view of the country that it is or should be a unitary state with unlimited federal power."
(5:72)

Peter Meekison

(Vice-President of the University of Alberta, former Deputy Minister of the Alberta Department of Federal and Intergovernmental Affairs)

- "To me this provision strengthens the federal system because it provides for flexibility. To take an extreme case, if the majority of the provinces opt out of a proposed shared-cost program, the federal government can tell them to forget it, that they will do something else with the money or develop the program in a different way. The other example is when one or two provinces say they wish to establish or continue their own program. Regardless of which scenario is followed, negotiations and discussion are inevitable with the objective of seeing everybody participate, and/or to ensure that the program of the province that does not participate is compatible with national objectives." (10:45)

Honourable J.W. Pickersgill

(Former federal Cabinet Minister, Secretary to the PM and Secretary to the Cabinet)

- "[The Accord will] increase the power of Parliament. For the first time, the power of Parliament to spend money on provincial fields is affirmed in the Constitution." (10:126)

Yves Fortier, Q.C.

(Former President of the Canadian Bar Association)

- "The federal spending power remains intact. The federal government can therefore spend, as payments or otherwise, for the benefit of individuals, governments or even entire regions of the country in federal or provincial areas. The only limit to its power is inherent in the federalist principle and has existed since 1867: the federal government cannot use the spending power to invade and regulate areas that fall under exclusive jurisdiction." (12:85)

On "national objectives":

Peter Leslie

(Director, Institute of Intergovernmental Relations, Queen's University)

- "... [The spending power provision] sets up a bargaining process, and this is the point I would really like to stress, between the federal government and the provinces. The federal government, if it wants to take a new initiative, will have to be clear what its objectives are ... and then to see that the program design is related to those purposes". (4:115)

Richard Simeon

(Director, School of Public Administration, Queen's University)

- "I much prefer the use of the word "objectives" in the accord to the use of the words "national standards", which many people have called for. The former, "national objectives", captures what we want. It captures the notion of leadership on direction, on goals, on purposes, but leaves the means flexible. The words "national standards", it seems to me imply a coercive, regulatory role, which we do not want." (5:72)

Peter Meekison

(Vice-President of the University of Alberta, former Deputy Minister of the Alberta Department of Federal and Intergovernmental Affairs)

- "Regardless of which scenario is followed, negotiations and discussion are inevitable with the objective of seeing everybody participate, and/or to ensure that the program of the province that does not participate is compatible with national objectives." (10:45)

Terry Hunsley

(Executive Director, Canadian Council on Social Development)

- "...We believe the concept of national objectives could actually represent a very real step forward in the evolution of national and social programs." (12:39)
- "We made the point in our brief that standards have been few and far between in national cost shared legislation. In fact they have tended to refer more to administrative standards than to the actual outcomes or results of programs. We like the word "objectives" if it is clearly defined. We felt it could be a clear advance over the limited extent to which standards might be introduced at present. Standards traditionally have been concepts the federal government has tried to have accepted with limited success." (12:40-41)

ONTARIO SELECT COMMITTEE ON CONSTITUTIONAL REFORM

Group of Eleven Academics*

- "The clearest embodiment of our view of creative federalism in the Accord is the clause on the federal power to spend in areas of provincial jurisdiction. For the first time it gives explicit recognition to this federal power. At the same time it ensures that the power will not be used to subvert the division of powers, and ensures the ability of provinces to vary programs in accord with local needs and citizen concerns. It will allow Canadians to find the appropriate balance between national objectives and provincial variety in each particular case." (Submission to the Select Committee, p. 3)

Richard Simeon

(Director, School of Public Administration, Queen's University)

- "I strongly endorse the spending power provisions in the document, partly because they set up exactly the right dynamic for federalism, as I understand it. That is to say, it legitimizes federal intervention for major national purposes into areas of provincial jurisdiction for the very first time, or gives it constitutional weight for the very first time, and as well establishes the right balance between national objectives and national concerns in provincial variations." (C-88, March 22, 1988)

Honourable Ian Scott

(Attorney General of Ontario)

- "Section 106A gives express constitutional recognition to the federal government's capacity to impose conditions on the provinces when it spends in areas of exclusive provincial

* Keith Banting, Queen's; Thomas J. Courchene, York; William R. Lederman, Queen's; Peter M. Leslie, Queen's; Kenneth McRoberts, York; John Meisel, Queen's; Peter Russell, University of Toronto; Richard Simeon, Queen's; Donald Smiley, York; Hugh G. Thorburn, Queen's; and Ronald Watts, Queen's

jurisdiction. The federal government will when establishing such programs, set national objectives. At the same time, a province's entitlement to compensation if it establishes a compatible program has been constitutionalized. In this way, the provinces will be able to ensure that such programs are sensitive to local and provincial needs." (Submission to the Ontario Select Committee, May 4, 1988, p.37)

ONTARIO SELECT COMMITTEE ON CONSTITUTIONAL REFORM

Honourable Jean-Luc Pépin

(Former federal Cabinet Minister, Co-chairperson on Pépin-Roberts Task Force on Canadian Unity)

- "There is no real limitation on the spending power in the Meech Lake Accord; truly, there is none ... I would even say there has been a strengthening of the federal spending power in provincial matters." (Translation - March 23, 1988)

Honourable J.W. Pickersgill

(Former federal Cabinet Minister, Secretary to the PM and Secretary to the Cabinet)

- "It has been alleged that Meech Lake would weaken the spending power of the Parliament of Canada. My opinion is that the spending power of Parliament would be strengthened by Meech Lake because it would be, for the first time, set out clearly in the Constitution ... Parliament would have the final word on the terms of any shared-cost program and on the terms of any compensation to a province which opted out. So these great fears, that this was some way some province could get a bonanza by opting out, are really, if you read the Accord, totally unfounded." (C-13, March 24, 1988)

Peter Meekison

(Vice-President of the University of Alberta, former Deputy Minister of the Alberta Department of Federal and Intergovernmental Affairs)

- "To me this provision [the spending power] strengthens the federal system because it provides for flexibility ... The objective is to have everybody participate and/or to ensure that the program of a province which does not participate is compatible with national objectives. The political process will dictate how this provision evolves. To me it is a safety valve" (February 1988, p.8)

HIGHLIGHTS OF COMMITTEE REPORTS

SPECIAL JOINT COMMITTEE OF THE HOUSE AND SENATE

- "We do not share the doom and gloom prophesies of the opponents of proposed section 106A." (p. 76)
- "The Committee further believes that proposed section 106A constitutes a reasonable accommodation of federal and provincial concerns." (p. 76)
- "What opponents of proposed section 106A have too often lost sight of is the fact that the section is concerned with national shared-cost programs. There will inevitably be federal-provincial negotiations leading up to the establishment of any such program. Such negotiations are as likely in future to result in a reasonable compromise on such programs as has been the case in the past." (p. 77)
- "Negotiations and compromises by both the federal and provincial governments will be necessary for the establishment of any new national shared-cost programs given the present economic conditions in Canada. The federal government will retain most, if not all, of its bargaining chips in such negotiations." (p. 77)
- "Canadians in various parts of the country will be guaranteed the right to programs which may differ in their particulars, but which all strive to achieve the same goal." (p. 77)
- "We believe that national shared-cost programs in areas of exclusive provincial jurisdiction can still be negotiated to the benefit of both the federal government and the provinces, and that the major effect of the proposed amendment would be to place a renewed emphasis on negotiation. According to the view of federalism underlying the 1987 Accord, this is as it should be." (pp. 140-41)

ONTARIO SELECT COMMITTEE ON CONSTITUTIONAL REFORM

- The Committee thinks that the new section 106A strikes a good balance between the need for provincial variations in the implementation of national shared-cost programs in areas of exclusive provincial jurisdiction, and the need for national standards." (p. 40)

DEBATES IN THE HOUSE OF COMMONS/PROVINCIAL LEGISLATIVE ASSEMBLIES

HOUSE OF COMMONS - FIRST DEBATE

The Right Honourable John Turner
(Leader of the Opposition)

- "We also recognize there has probably been a strengthening of federal spending power by explicitly recognizing for the first time that it may be exercised within areas of provincial jurisdiction." (House of Commons Debates, September 29, 1987, 9431)

The Honourable Edward Broadbent
(Leader of the New Democratic Party)

- "I wish to make the point that if there has been any shift whatsoever, it has been to clarify, confirm, and will have written in the Constitution for the first time the right of the federal Government to spend in areas otherwise in exclusive provincial jurisdictional authority." (House of Commons Debates, October 21, 1987, 10241)

HOUSE OF COMMONS - SECOND DEBATE

The Right Honourable Brian Mulroney
(Prime Minister)

- "On spending power, for example, while affirming the federal prerogative, we provided for opting out with compensation for provinces which meet national objectives in programs of their own. However, opting out with compensation is not a new idea. It was not dreamed up at Meech Lake. Prime Minister Pearson first introduced the possibility of opting out of shared cost programs through the Established Programs Act of 1965. This applied to matters such as hospital insurance, old age assistance, the welfare portion of unemployment insurance, and vocational training. This is nothing new. Under these conditions social programs have been established in the past, they are being established in the present, and they will continue to be developed for the national good in the future." (House of Commons Debates, June 14, 1988, 16408)

The Honourable Edward Broadbent

(Leader of the New Democratic Party)

- "The truth is that there are already variations in the design and delivery of programs for Canadians in various parts of the country. That is what a federal Constitution, in part, is all about."
(House of Commons Debates, June 14, 1988, 16415)
- "In the Accord, we see for the first time the federal Government's right to create shared cost programs in areas that have hitherto been exclusively reserved to the provinces in the written Constitution, which is now to be enshrined in the letter of the law in the Constitution of Canada. That, if anything, is an expansion of the federal authority, not its reduction.

No longer will it be necessary for the federal Government to obtain legitimacy for such action either from past precedent by courts or from the highly contentious use of its spending authority. It will now be written in the Constitution. The federal Government will still have the right to decide where and how and on what terms it spends. It will have the right to attach strings to such a program. It will be the Parliament of Canada that will decide here in this debating Chamber, with all Parties representing all regions of Canada, what the national objectives of such a spending program ought to be." (ibid, 16414)

- "My Party would not have supported the Accord had we believed that federal Governments would not be able to continue their right of showing this kind of imaginative leadership in the future, whether on child care or some other important aspect of social policy." (ibid, 16415)

Pauline Jewett

(New Democratic Party Member: New Westminster-Coquitlam)

- "... far from retreating from the possibility of having national shared-cost programs, and I am thinking primarily of social programs but there would be economic programs as well, the Accord strengthens and constitutionalizes the possibility of future programs." (House of Commons Debates, May 19, 1988, 15648)

- "I remind everyone in the Chamber that it was in the 1960s that we got our national social programs in key areas like medicare and the Canada Pension Plan during what we called an era of co-operative federalism. That is the kind of federalism that Meech Lake itself embraces. We did not get those national programs through dictation or usurpation of power. We got them through discussions between the federal and provincial authorities. In the case of medicare, it started when only two provinces were in agreement and then others came on board." (House of Commons Debates, May 19, 1988, 15649)

Honourable Robert Kaplan
(Liberal Member-York Centre)

- "I think, many of the critics of the Meech Lake Accord have exaggerated very considerably what it is this provision does. Certainly, it does not take away the spending power of the federal Government. The federal Government still has the power to spend money. In fact, the power is specified in the statute, or what will be in the Constitution, in a way of clarity which it has never had before. But the provision itself on the spending power does not eliminate the federal Government's power to spend money in areas of exclusive provincial jurisdiction." (House of Commons Debates, May 19, 1988, 15643)

DEBATES IN THE HOUSE OF COMMONS/PROVINCIAL LEGISLATIVE
ASSEMBLIES

QUEBEC

Honourable Gil Rémillard

(Minister responsible for Canadian Intergovernmental
Affairs)

- "We believe that, if we are to maintain the unity of this federation, there must be national programs in areas that are important to the lives of Canadians ... What we are saying, however, is that we can have our own needs, our own basis of economic and social evolution, and we want to respect this characteristic, this distinctiveness of ours. Within this framework, we wish to respect the national objectives, but we want to have in hand the tools for our social, political and economic development. And that is what we have obtained with this spending power."
(National Assembly Debates, June 19, 1987, 8783)
[unofficial translation]

SASKATCHEWAN

Honourable Grant Devine

(Premier of Saskatchewan)

- "This provision in no way implies that the federal government will be inhibited in its role of providing leadership at the national level in the provision of new services to the population. This role will continue to be an important one. However, the practical effects of this new section will be to ensure that a high level of consultation between the federal government and the provinces proceeds, Mr. Speaker, the initiation of such national programs.
(Saskatchewan Hansard, July 9, 1987, 1051)

PRINCE EDWARD ISLAND

Honourable Joseph A. Ghiz
(Premier of Prince Edward Island)

- "This province depends on and benefits greatly from the spending decisions of a strong central Government. What is proposed in the Resolution is a clarification of that power and a constraint upon it only in the area of exclusive provincial jurisdiction. Nothing in what is proposed diminishes the legislative power for Parliament to spend money." (April 5, 1988)

NOVA SCOTIA

Honourable John Buchanan
(Premier of Nova Scotia)

- "[The spending power provision] is another example of cooperation, cooperative federalism ... there is no possible way that this will deprive the Government of Canada of the right ... to set the objectives of national provincial-federal social programs" (Legislative Assembly Debates, March 1, 1988, p. 182)

ONTARIO

Honourable Ian Scott
(Attorney-General of Ontario)

- "Federal spending is only limited in areas of exclusive provincial jurisdiction, and the limitation only applies to future shared-cost programs. It imposes no limit on existing programs nor does it apply to federal funding provided directly to individuals or institutions."
- "I believe it cannot be demonstrated that any program initiated by the federal government in the last 40 years would have failed to meet the test that the accord stipulates."
- "The spending provision makes plain that the federal government has the constitutional right to attach conditions to money it offers to provinces within areas of exclusive provincial jurisdiction... It is a matter of right that the

federal government can attach conditions to money it offers to provinces within areas of exclusive provincial jurisdiction."

- "This represents in totality a reasonable compromise between those who argue for an unlimited federal spending power in areas of exclusive provincial responsibility and those who would impose much more severe limits on that power. It is a much narrower restriction on federal power than was proposed, for example, by the federal government itself in the 1960s. We have not gone as far in the Meech Lake accord as the national government of that day proposed to go in relation to spending power." (Ontario Hansard, November 25, 1987, 551)

Bob Rae

(Leader of the Official Opposition, Ontario)

- "Nor am I ... one of those who believes that the section of the Constitution with respect to the spending power necessarily limits or takes away from the rights of the federal House which it now has."
- "As for the allegation ... that it would be impossible to have a national day care program with this section of the Constitution... I just do not share that view. I do not see that as part of what we have agreed to or what the Premiers have agreed to. I do not see that as being in this document." (Ontario Hansard, November 25, 1987, 555-56)

NEWFOUNDLAND

Honourable Brian Peckford

(Premier of Newfoundland)

- "[The spending power provision] establishes the legitimate and necessary role for the federal government in funding national shared-cost programmes in areas of provincial jurisdiction ... [providing] an incentive for the federal government to design new national shared-cost programs". (House of Assembly Debates, March 17, 1988) p.189

ACADEMIC COMMENT

Tom Courchene

(Robarts Professor of Canadian Studies, York University)

- "... it is not clear that there has been any surrendering of federal authority with respect to the spending power itself. While one cannot deny that the provinces may have gained something from this amendment, I am also suggesting that the federal government also gained something. ... the view that this amendment transfers powers solely to the provinces is quite misleading." (Robarts Centre for Canadian Studies, Working Paper Series 87-F02, pp.40-41)

Peter Hogg

(Professor of Law, Osgoode Hall Law School, York University)

- "S.106A reflects the political reality that the federal government must respect provincial autonomy when it develops federal policies in areas of exclusive provincial jurisdiction." ("Analysis of the New Spending Provision (s.106A)", paper presented at the University of Toronto Symposium on the Meech Lake Accord, October 30, 1987, p. 4)
- "The present law is not entirely clear, and so the new s.106A constitutes a clarification of the breadth of the federal spending power." (ibid., p. 5)
- "A national objective will always be a rather general proposition, but it may carry detailed specific implications. Take the Canada Health Act as a hypothetical example. (It is hypothetical because s.106A has no application to shared-cost programs that are already in existence.) If the universal accessibility of free health care were accepted as a national objective, then the ban on extra-billing would seem to be an essential element of any plan that conformed to the national objectives. In other words, a plan established by a non-participating province that did not include a ban on extra-billing would not be compatible with the national objectives." (ibid., pp. 9-10)

J. Stefan Dupré

(Professor of Political Science, University of Toronto)

- "Viewed as an exercise in the art of federal-provincial compromise, Section 106A is a masterpiece." (Paper presented at the University of Toronto Symposium on the Meech Lake Accord, October 30, 1987, p. 3)
- "That Quebec's longstanding demand for limitations on the federal spending power can be met to its satisfaction through this minimalist approach can only be called a triumph in the art of getting to yes." (ibid, p. 5)
- "The prospect that Section 106A may have the net effect of judicializing federal-provincial fiscal relations appears trivial." (ibid, p. 11)
- "I find it reasonable to anticipate that Section 106A will have minimal consequences for the conduct of federal-provincial fiscal relations. If anything, it will simply reinforce a pattern of conduct that is in line with trends whose outline has emerged with growing clarity in recent years." (ibid, p. 11)

Pierre Fortin

(Professor of Economics, Laval University)

- "Maximum satisfaction of wants (with a given amount of money) obviously requires that national programs accommodate the existing variations in individual preferences to some extent. Provincial differentiation of the program often helps to meet this objective ... The proposed section 106A would simply entrench this practice in areas of exclusive provincial authority while requiring that national objectives be met everywhere. It clearly does seek to maintain a fair balance between national principles and the flexible regional implementation of these principles." (Paper presented to the University of Toronto Symposium on the Meech Lake Accord, October 30, 1987, p. 9)
- "The threat of provincial non-participation in new shared-cost programs and of the associated court litigations will create a greater incentive for

the federal government to negotiate the terms of future shared-cost programs with the provinces so as to arrive at a national consensus that is tailored to the specific regional needs." (ibid, pp. 9-10)

- "All provinces will also be induced to contribute to the definition of the national objectives, because they will be bound by those objectives whether or not they participate in the national program, and because public opinion will be merciless for provincial governments that take too lightly their participation in programs perceived as highly desirable." (ibid, p. 10)

Jim de Wilde

(Professor of Business Administration, University of Western Ontario)

- "The clarification of the terms under which the federal spending power is used (in areas of existing provincial jurisdiction) does not address constitutional balance. It is intended to provide flexibility in the construction of federal-provincial programs. There is a new agenda of public policy issues confronting Canadian governments. Successful policy instruments will have to be responsive, flexible and innovative.
- "The realities of federal provincial bargaining made issues like national child-care complex before the Meech Lake Langevin Accord. The clarification and flexibility of the spending power should not make Canadian social policy more difficult. Neither of these constitutional objectives is incompatible with a strong federal role in major policy areas." ("Meech Lake, in Itself, Will not Weaken Charter", London Free Press, October 26, 1987)

Andrew Petter

(Faculty of Law, University of Victoria)

- "In the near term at least, an emphasis on intergovernmental collaboration would likely guide the operation of section 106A. Higher general levels of conflict between the federal and provincial governments or changes in key participants could obviously erode existing understandings of the section. Nevertheless, the

incentives to intergovernmental bargaining, a concern on all sides to avoid litigation, and a desire on the part of the federal government to limit the extent of opting out by proposing flexible programs would likely endure." (From a paper presented to the University of Toronto symposium on the Meech Lake Accord, October 30, 1987, p. 9)

Michel Bastarache

(Professor, Faculty of Common Law, University of Ottawa
- now on leave and practicing with Lang Michener Lash,
Johnston - Ottawa)

- "The establishment of a framework for the federal spending power is, in my view, fully consistent with the federal character which should mark the evolution of the Canadian federation."
(Translation from notes for a presentation at a symposium of the Constitutional and Civil Rights section of the Canadian Bar Association - Quebec Division, November 14, 1987, p. 1)

Murray Donnelly

(Former Professor of Political Studies, University of Manitoba)

- "But suppose a province does opt out, is that really so undesirable? Must we assume that everything must be done the same way everywhere? There may be local conditions that should be met. We now have two pension plans, the Canada Pension Plan and the Quebec Plan and this has worked well." ("Meech Lake Will Work - New Accord Will Help Build a Better Federalism", Winnipeg Free Press, February 15, 1988)

RECENT POLITICAL COMMENT

Senator Lowell Murray

(Minister of State for Federal-Provincial Relations)

- "The purpose of the Accord provisions dealing with the spending power is to civilize the use of the spending power and clarify the fact that it cannot be used to force the provinces to act against their will in the areas of exclusive provincial jurisdiction. The Accord recognizes, however, that it is constitutionally acceptable for Parliament to set up new jointly-financed programs in areas of exclusive provincial jurisdiction." (Senate Debates, March 31, 1988, 3051)
- "This provision on the spending power is much less rigid than what the Trudeau government had offered in 1969 and 1979. In both cases, the creation of new jointly-financed programs would have been subjected to the agreement of the majority of the provinces. There is no similar provision in the Meech Lake Accord." (ibid, 3052)
- "...let us remember that, although there is a national framework for health care in Canada, there are, in fact, ten separate provincial programs that vary in a number of respects. In some provinces the provincial share of the cost is covered by the Consolidated Revenue Fund; in others there is a monthly premium paid by individuals who earn more than a basic monthly income; in some provinces ancillary services are covered. But all provinces respect the national objectives of universality, accessibility and portability. In short, the national objectives are met in Medicare notwithstanding provincial variations in methods of provincial financing, administration and ancillary services ... Medicare could have been established under the Meech Lake Constitutional Accord." (Senate Debates, April 21, 1988, 3214)
- "...the new provision on the spending power will place a higher premium on cooperation and intergovernmental negotiations. In doing so, it will lower the risk too frequently encountered in the past of sudden, unilateral federal changes in conditions and funding that present special

hardships for the smaller provinces ... a lot more damage has been done to the poorer provinces by the exercise of unilateral actions by the federal government in cutting back on revenue guarantees, unilaterally imposing caps, maximums and ceilings on the federal contribution to shared-cost programs. A lot more damage has been done to the poorer provinces by that kind of provision than could ever be done by this kind of provision. In fact, I say that this new process will make it far less likely that a federal government will be able to do that sort of thing and get away with it." (Senate Debates, April 21, 1988, 3214)

Senator Arthur Tremblay

- [Re Medicare:] "I find it interesting that the first federal law in this area was given royal assent on December 21, 1966, when the Right Hon. (Lester) Pearson was Prime Minister. I am struck that despite the terms used, the criteria that provincial legislation must satisfy in accordance with this Act for the federal government to contribute to program financing are worded so generally that they correspond in effect to "objectives", to use the language of Section 7 of the Meech Lake Agreement. I will spare you reading the full text of the key section on this in the 1966 Act. Besides, the formulation is somewhat convoluted, but I only ask that you take from it what I shall deduce." (Senate Debates, April 20, 1988, 3183)

OTHER RECENT COMMENT

Honourable Jean-Luc Pépin
(Former federal Cabinet Minister)

- "A safeguard has been added at Langevin to say that 'nothing in this section extends the legislative powers of the Parliament of Canada or of the legislatures of the provinces'. The understood was stated ... One order of government cannot get an amendment to the constitution by way of a shared cost program. Anybody who sees in this a 'surrender' of the spending power, the balkanization of social services, a plot to 'subordinate' the central Government of Canada to the provinces has ... imagination!" (Notes for a speech to the Ottawa Chamber of Commerce, June 22, 1987)

Yves Fortier, Q.C.

(Former President of the Canadian Bar Association)

- "The double federal-provincial veto provided for the appointment of judges to the Supreme Court of Canada appears to me to be a formula that is the faithful reflection of the Canadian federalist compromise and one that bears witness to the maturity of our political leaders." (12:84)

Edward McWhinney, Q.C.

(Professor, Department of Political Science, Simon Fraser University)

- "If you asked me if I can support the present measures on the Senate and the Supreme Court, I would say yes, they are better than the present system ... There are possibilities to be built on and I find these measures represent an improvement." (15:64)

Senate:

Honourable Gordon Robertson

(Former Secretary to the federal Cabinet)

- "I think that the Senate arrangement in the accord is satisfactory as a stopgap. My understanding is that Senate reform is going to be seriously tackled in the second round. Subject to that second round, I see no problem about the Senate arrangement as an interim arrangement." (3:78)

Honourable Robert Stanfield

(Former Premier of Nova Scotia and former Leader of the Opposition)

- "I cannot conceive of the Senate of Canada getting in the condition where, again to cite Mr. Trudeau, the provinces would be able to defeat any legislation the government and Parliament of Canada chose to do". (5:103)

ONTARIO SELECT COMMITTEE ON CONSTITUTIONAL REFORM

Donald Stevenson

(Former Deputy Minister, Intergovernmental Affairs,
Present Ontario Representative to the Federal and
Quebec Governments)

- "So most constitutional proposals of the past 20 years involved some element of federal and provincial input into the choice of Supreme Court justices." (February 2, 1988)

Peter Hogg

(Professor of Law, Osgoode Hall Law School, York
University)

- "It has always been a bone of contention in federal-provincial discussions that the court which serves as the arbiter of federal-provincial constitutional disputes ought not to exist by the sufferance of one level of government, that ought to be protected by the Constitution. So that is one thing that the Meech Lake Accord does that most people regard as a very important step." (February 2, 1988)

Group of Eleven Academics*

- "Neither the Supreme Court as the final legal umpire, nor the Senate as the chamber designed to represent provincial views in Parliament, should be appointed solely by the federal government." (Submission to the Select Committee, p. 4)

Honourable Ian Scott

(Attorney General of Ontario)

- "The territorial governments have been excluded from the nominating process because the territories do not possess the legal status of provinces and because their governments are not

* Keith Banting, Queen's; Thomas J. Courchene, York; William R. Lederman, Queen's; Peter M. Leslie, Queen's; Kenneth McRoberts, York; John Meisel, Queen's; Peter Russell, University of Toronto; Richard Simeon, Queen's; Donald Smiley, York; Hugh G. Thorburn, Queen's; and Ronald Watts, Queen's

endowed with full powers over the administration of justice as set out in section 92(14) of the Constitution Act, 1867. On the other hand ... the Meech Lake Accord goes further than the present Supreme Court Act in making it possible for justices or members of the bar from the territories to be eligible for elevation to the Supreme Court of Canada. (Submission to the Ontario Select Committee, May 4, 1988, p. 66).

- "With the Supreme Court of Canada, the federal government alone has the power to create the court, confer jurisdiction upon it and appoint its judges. The Meech Lake Accord attempts to re-establish the balances necessary in a federal system by giving the provincial governments a role in the process of judicial appointment." (ibid, p. 63)

Richard Simeon

(Director, School of Public Administration, Queen's University)

- "I agree very much with a provincial role in appointment of Senators and in particular of Supreme Court judges. It seems to me that those bodies, especially the Supreme Court which is sort of the umpire of federalism, should not be a creature of any one of the two orders of government. This may not be the best way of securing both level's involvement in Supreme Court appointments, but it is, I think, a reasonable one." (March 22, 1988)

HIGHLIGHTS OF COMMITTEE REPORTS

SPECIAL JOINT COMMITTEE OF THE HOUSE AND SENATE

- "The Joint Committee is of the view that the proposals for amendment relating to the Supreme Court of Canada are workable." (86)
- "The proposed appointment process no more encourages or discourages excellence in Supreme Court appointments than the present appointment process. There is nothing in the proposals to preclude either the federal government or the various provincial governments from devising procedures to ensure excellence." (86)

DEBATES IN THE HOUSE OF COMMONS/PROVINCIAL LEGISLATIVE ASSEMBLIES

HOUSE OF COMMONS - FIRST DEBATE

The Right Honourable Brian Mulroney
(Prime Minister)

- "On the question of the Territories, the joint committee noted that their residents will continue to be constitutionally eligible for appointment to the Senate and the Supreme Court. The Government shares this view and agrees with the committee that First Ministers may wish to examine the matter at future constitutional conferences."
(House of Commons Debates, October 21, 1987, 10247)

Honourable Edward Broadbent
(Leader of the New Democratic Party)

- "If Supreme Court judges are going to be making decisions, as they do, in matters that affect federal and provincial powers, and if they are going to make decisions that affect the rights of Canadians, federal citizens as well as provincial citizens, it is entirely legitimate and appropriate that the provinces play a role in the selection of Supreme Court judges. I think that is a good recommendation." (House of Commons Debates, October 21, 1987, 10242)

HOUSE OF COMMONS - SECOND DEBATE

The Right Honourable Brian Mulroney
(Prime Minister)

- "... if you were to compare short lists of the federal Government with the provinces and the bar for the position you would no doubt find in almost every circumstance almost entirely the same names. But the national Government decides in all circumstances and therefore has the absolute and final say." (House of Commons Debates, June 14, 1988, 16408)

The Honourable Edward Broadbent
(Leader of the New Democratic Party)

- "... what is wrong in the federal strategy with the provinces having a right to participate in the selection of Supreme Court judges? Surely that change as well as many others was long overdue in our federal Constitution. It is one that we strongly support." (House of Commons Debates, June 14, 1988, 16416)

Honourable Robert Kaplan
(Liberal Member-York Centre)

- "When one looks at the way the Supreme Court is presently constituted, it is appropriate to consider a change which will produce a balance; a Supreme Court of Canada which is bullet-proof in the sense that neither level of government can take shots at it and say that this is a court whose method of appointment disqualifies it from adjudicating our claims." (House of Commons Debates, May 19, 1988, 15643)

SASKATCHEWAN

Honourable Grant Devine
(Premier of Saskatchewan)

- "I believe this is an important step forward for Canada. The Supreme Court of Canada, as the final arbiter of the Canadian constitution, which of course now includes the charter, should not merely be a creature of the federal government. Because it is a crucial actor in the way our federal system works, it is entirely appropriate, Mr. Speaker, that provincial governments should have a role in selecting the individuals who will sit on this body and who will, by virtue of their position, play a major role in determining how Canada will evolve as a nation. The new provision, in my view, represents another dimension to the recognition of the federal fact in Canada, which is present in so many parts of this amendment." (Saskatchewan Hansard, July 9, 1987, 1050).

Mr. Allan Blakeney

(Leader of the Saskatchewan Opposition)

- "The Supreme Court should be constitutionalized, and this resolution does it and that's good."
(Saskatchewan Hansard, July 20, 1987, 1273)

ALBERTA

Mr. Ray Martin

(Leader of the Alberta Opposition)

- "If Supreme Court judges are going to be making decisions, as they do, in matters that affect both provincial and federal powers, and if they're going to make decisions that affect Canadians, federal citizens as well as provincial citizens, it is entirely legitimate and appropriate that the provinces play a role in the selection of Supreme Court judges ... that's an excellent recommendation. It's certainly one that has my support." (Alberta Hansard, November 25, 1987, 2048)

NEWFOUNDLAND

Honourable Brian Peckford

(Premier of Newfoundland)

- "[Provincial involvement] will provide provinces with a meaningful role in the selection of nominees for these important Canadian institutions... a very significant step forward for a more balanced federalism". (House of Assembly Debates, March 17, 1988) p.188

ONTARIO

Honourable Ian Scott

(Attorney-General of Ontario)

- "These proposals will not grant provinces undue control over these national institutions. No appointment can be made unless the candidate is acceptable to the federal government. Further, once the appointment has been made, the appointee is not subject in any way to provincial control. Here, as elsewhere, there is a realistic balancing between provincial and federal roles and responsibilities." (Ontario Hansard, November 25, 1987, 552)

BRITISH COLUMBIA

Honourable W. Vander Zalm
(Premier of British Columbia)

- The Accord "sets in motion an overdue process to give Canada's Pacific province a real say in the central institutions of Canada. It ensures that provinces must be equal and active partners in the process and is a call to continue our efforts for meaningful reform of central institutions such as the Senate and Supreme Court." (B.C. Hansard, 5533)

ACADEMIC COMMENT

Peter Russell

(Department of Political Science, University of Toronto)

- "Given the Court's role as arbiter of our federal system and a general court of appeal there should be no serious argument about the need for both levels of government to participate in the appointment process." ("Comments on the Supreme Court Proposals", paper presented at the University of Toronto Symposium on the Meech Lake Accord, October 30, 1987), p. 3)

Kenneth McRoberts

(Professor of Political Sciences, York University)

- "... only if the Supreme Court should be seen as the possession of the national government does it seem unacceptable that the provincial governments should be involved in the selection of its members. Within a federalist perspective, it might seem quite appropriate that the members of a body charged with adjudicating disputes between governments should be named by both of the parties to the disputes, rather than one of them." ("The Case for Meech Lake", The Canadian Forum, December 1987, p. 13)

Gerald A. Beaudoin

(Director, Human Rights Centre and Professor of Law, University of Ottawa; Commissioner on Pépin-Robarts Task Force on National Unity)

- "With respect to the nomination of judges, a formula has been sought for decades which would reflect the proper role of the provinces in a federation. According to this criterion, the practice followed since 1875 does not respect the theory of federalism; the present process is unilateral. I know of no constitutional expert who has not drawn attention to this deficiency in the Canadian federation." (Translation - paper presented at a symposium of the Constitutional and Civil Rights Section of the Canadian Bar Association - Quebec division -- on the Meech Lake Accord, November 14, 1987, p.3)

Tom Courchene

(Robarts Professor of Canadian Studies, York University)

- "I understand, but do not subscribe to, the view that the appointment procedures represent an inappropriate transfer of power or influence to the provinces. Other federations provide for provincial/state input, sometimes via ratification by the upper chamber as in the case of the U.S.A. Moreover, the role for provincial input is hardly novel. For example, the 1971 Victoria Charter proposals required Supreme Court appointments to be agreed upon by the Attorney General of Canada and the Attorney General of the province." (ibid, p. 31)

RECENT POLITICAL COMMENT

Honourable Joseph A. Ghiz
(Premier of Prince Edward Island)

Senate:

- "Pending Senate Reform, all appointments are made from lists supplies by the provinces. In an historical context ...this provision is quite a reasonable one and in no way signals a lessening of the executive power of the central government." (Address to the Institute of Island Studies, April 11, 1988)

Supreme Court:

- "The Charter of Rights has greatly increased the role and power of the courts in the lives of governments and residents of the provinces. It is quite appropriate, therefore, that the values of all parts of society be respected at least in the procedures for appointments!" (Address to the Institute for Island Studies, April 11, 1988)

Senator Lowell Murray
(Minister of State for Federal-Provincial Relations)

- "[The] committee [of the Whole] has heard claims, some of them rather extreme, that the Accord weakens federal powers and grants provincial governments an inappropriate role in Supreme Court and Senate appointments. In the view of the government this Accord proposes a balanced set of changes which respond to provincial interests while safeguarding federal authority." (Senate Debates, March 31, 1988, 3051)

OTHER RECENT COMMENT

Louis Duclos

(Former Liberal Member of Parliament)

- "... the inclusion in the Constitution of provisions concerning the composition of the Supreme Court of Canada and the method for nominating its members represent quite remarkable progress from Quebec's standpoint. In effect whereas the presence of three judges from Quebec on the Supreme Court was previously attributable to a simple law of the Parliament of Canada which could be changed at anytime, the Meech Lake Accord makes it a constitutional requirement which cannot be revoked without the consent of Quebec itself." (Translation - "A Victory for Quebec on Several Fronts", Le Devoir, February 2, 1988)

Honourable Jean-Luc Pépin

(Former federal Cabinet Minister)

- "But to say that this method of appointment 'will transfer supreme judicial power to provinces' (M. Trudeau) is not more acceptable than to say that the present method of appointment by the federal government alone had transferred judicial power to the party in power in Ottawa!" (Notes for a speech to the Ottawa Chamber of Commerce, June 22, 1987)

SUPREME COURT: DEADLOCK BREAKING MECHANISM

TESTIMONY OF WITNESSES: PUBLIC HEARINGS

SPECIAL JOINT COMMITTEE OF THE HOUSE AND SENATE

Gérald Beaudoin

(Director, Human Rights Centre and Professor of Law,
University of Ottawa; Commissioner on Pépin-Robarts
Task Force on National Unity)

- [In response to a question from Hon. A. Ouellet about Quebec possibly choosing not to submit names for Supreme Court appointments:] "A government could always say that it did not want to appoint any judges to the Supreme Court. But would Quebec's voters go along with it? In the United States, the President and the Supreme Court have often disagreed. But, for example, in Roosevelt's time, the Supreme Court always won. Do you think a government that systematically refused to cooperate would be viewed favourably by the public? I am sure it would not." (2:71-72)

Robert Décary

(Constitutional lawyer)

- "Although this danger of an impasse currently exists, it is never real. If it should arise, I would oppose the idea that the proposed mechanism would call upon arbitrators or third parties. It is important that the appointment of judges continues to be a reality, a political obligation, a government obligation. I do not see how a judge of the Supreme Court could, in the last resort, be appointed by the Canadian Bar Association or by a committee of citizens, for example. Such a judge would be accountable to certain individuals, and that is unacceptable, in principle." (4:68)

Peter Leslie

(Director, Institute of Intergovernmental Relations,
Queen's University)

- "The procedure here allows for a mutual veto and does not transfer responsibility or power uniquely to the provinces in these matters. So here too I see an informal process of negotiation, or conceivably even in some cases a formal process of consultation with third parties, with the result that appointments are truly jointly made." (4:101)

Yves Fortier, Q.C.

(Former President of the Canadian Bar Association)

- "The double federal-provincial veto provided for the appointment of judges to the Supreme Court of Canada appears to me to be a formula that is the faithful reflection of the Canadian federalist compromise and one that bears witness to the maturity of our political leaders." (12:84)
- "In my limited experience, whenever there have been vacancies on the Supreme Court, which have been filled by the federal government up to now, I question whether, in any instance, the final short list...would have been different in Ottawa from what it would have been in the relevant provincial capital." (12:90)

Edward McWhinney, Q.C.

(Professor, Department of Political Science, Simon Fraser University)

- "If you asked me if I can support the present measures on the Senate and the Supreme Court, I would say yes, they are better than the present system ... There are possibilities to be built on and I find these measures represent an improvement." (15:64)
- "My own sources ... persuade me that the process of appointment of the last Supreme Court of Canada judge was a highly civilized process in full accord with the Meech Lake principles and practices still to be adopted legally. It involved the federal government and the Quebec government, and everybody was happy. It is better than the present system and I am prepared to endorse it for that reason." (15:64)

ONTARIO SELECT COMMITTEE ON CONSTITUTIONAL REFORM

Honourable Ian Scott
(Attorney General of Ontario)

Supreme Court

- "The prospect of putting into place some kind of deadlock-breaking mechanism was considered. Most such proposals involved the appointment of a judge to make the final decision if the governments were deadlocked. However, such proposals violated the constitutional principle of separation of powers: the selection of judges is an executive function, and members of the judicial branch should not be involved in the selection of another judge."
- "But perhaps the greatest difficulty with a deadlock-breaking mechanism is that its very existence may have a 'chilling effect' on reaching an agreement. The availability of a deadblock-breaking mechanism often discourages parties from assuming responsibility for reaching a compromise agreement. In the absence of a deadlock-breaking mechanism, the governments of Canada and the provinces will be under extraordinary political pressure to find a candidate acceptable to both of them. A deadlock-breaking mechanism would take the political pressure off of the Prime Ministers and might actually force them farther apart in their bargaining positions." (Submission to the Ontario Select Committee, May 4, 1988, p. 64)

HIGHLIGHTS OF COMMITTEE REPORTS

SPECIAL JOINT COMMITTEE OF THE HOUSE AND SENATE

- ° "Each of the procedures to break a deadlock that has been proposed to date suffers from the same frailty, that is to say, the tie-breakers proposed have been unelected officials. This flies in the face of the principle that all members of the judiciary, and particularly the judges of the Supreme Court of Canada, should be appointed by persons responsible to the electorate. The advent of the Canadian Charter of Rights and Freedoms has, in our view, added weight to this principle. Given the types of decision that the Supreme Court of Canada must now make because of the Charter, the need for electoral responsibility has, if anything, been heightened." (85)
- ° "Moreover, some witnesses have argued that the introduction of a tie-breaking formula, in the context of the present proposal, would likely be self-defeating. A tie-breaking formula would, it is said, tend to discourage negotiations and compromise on the part of the governments involved in the appointment process. The very possibility of a deadlock is likely to discourage deadlock, whereas the existence of some tie-breaking formula is more likely to encourage, rather than discourage, deadlocks." (85)

ACADEMIC COMMENT

Tom Courchene

(Robarts Professor of Canadian Studies, York University)

- "Both parties effectively have a veto. This may generate concern from legal and constitutional quarters, but in reality it is just another one of the many areas where Canadians will eventually carve out an acceptable compromise, if the situation requires it ... The procedures for appointing judges from the other nine provinces are likely to work extremely well. In effect, the provinces will be competing with each other to have their nominees selected. The end result is that the federal government is likely to have an enviable choice set." (Robarts Centre for Canadian Studies, Working Paper Series 87-F02, p. 29)

Peter Russell.

(Department of Political Science, University of Toronto)

- "Concern has been expressed that unlike most previous proposals the current proposals contain no mechanism for breaking deadlocks when the two levels of government cannot agree.... My own preference is for the optimistic constitutional statescraft of today's constitution makers and a provision which relies on comity rather than a worse case scenario provision which anticipates discord." ("Comments on the Supreme Court Proposals", paper presented at the University of Toronto Symposium on the Meech Lake Accord, October 30, 1987), p. 3)

Gérald Beaudoin

(Director, Human Rights Centre and Professor of Law, University of Ottawa; Commissioner on Pépin-Robarts Task Force on National Unity)

- "Under the Meech Lake Accord, the Prime Minister of Canada will have considerable power in this area. In the case of the common law provinces, he can, in a deadlock situation, consider a judge from a province other than the one which tradition or rotation favours. The province whose turn it is according to tradition or practice will have

much to gain by nominating candidates acceptable to him. For Quebec with its right to three judges, the situation is slightly different. The Prime Minister and the Premier will have to resolve the impasse ... The Meech Lake formula is in any event preferable to the present formula which represents complete unilateralism."

(Translation paper presented at a symposium of the Constitutional and Civil Rights Section of the Canadian Bar Association - Quebec division -- on the Meech Lake Accord, November 14, 1987, p.5)

Guy Tremblay

(Professor, Faculty of Law, Laval University)

- "I note in closing that the drafting of the Meech Lake Accord does not make provision for a deadblock-breaking mechanism in cases where one or both orders of government do not agree on the candidate for nomination. This silence is probably the wisest solution and is in keeping with Montesquieu's dictum that to organize things so as to advance, one has to work together."
("The Reform of Institutions and of the Amending Formula in the Meech Lake Accord", The Adherence of Quebec to the Meech Lake Accord, les éditions thémis 1988, p. 84)

SENATE REFORM

TESTIMONY OF WITNESSES: PUBLIC HEARINGS

SPECIAL JOINT COMMITTEE OF THE HOUSE AND SENATE

Eugene Forsey

(Former Senator and constitutional expert)

- "The existing provisions of the act of 1982 dealing with Senate reform make any Senate reform that involves amendments to the Constitution almost a total impossibility." (2:100)

Honourable Gordon Robertson

(Former Secretary to the federal Cabinet)

- "I think that the Senate arrangement in the accord is satisfactory as a stopgap. My understanding is that Senate reform is going to be seriously tackled in the second round. Subject to that second round, I see no problem about the Senate arrangement as an interim arrangement." (3:78)

Richard Simeon

(Director, School of Public Administration, Queen's University)

- "I do not see it as being a great deal more difficult to get Senate reform of that sort than it was under the 1982 Constitution where it could have been done with the 7/50 rule, because the provinces most likely to be threatened by a Senate made up of equal representatives are Ontario and Quebec. They already had the capacity to veto it.
- Certainly there is more rigidity than we had in 1982, but I would not say significantly more rigidity.
- Secondly, I think the exclusion of Quebec has been a barrier to constitutional development and innovation and barrier is now removed." (5:78)

Honourable Robert Stanfield

(Former Premier of Nova Scotia and former Leader of the Opposition)

- "I regard a constitutional amendment relating to Senate reform as very difficult to achieve in a number of areas ... So I do not think that reform of the Senate is by any means assured prior to the Meech Lake Accord, nor do I believe it is assured now." (5:104)

- "To think we could have done [Senate reform] now, at the same moment when we were doing the other things we were doing at Meech Lake, seems to me impossible; and the charges that the whole thing is too precipitate would be many, many times greater if in fact, as part of this package, there had been an elaborate proposal for an elected Senate." (5:86)

Peter Meekison

(Vice-President of the University of Alberta, former Deputy Minister of the Alberta Department of Federal and Intergovernmental Relations)

- "Senate reform is no more difficult under the proposed change than it is under the existing formula in that...it is very difficult for a province to cast a veto. The natural tendency ...is to try to find a compromise. So, I feel that what Alberta has gained under this Accord is a guarantee that constitutional discussions will take place on Senate reform. Without that provision in the Accord, there is no such guarantee". (10:50)

"I think the consequences of Quebec's not accepting this are incalculable...Given the importance that Alberta places on Senate reform, there will not be debate on Senate reform until Quebec is in the Constitution...This is the inevitable, necessary first step. Get this behind us, then everything else can be discussed". (10:54)

ONTARIO SELECT COMMITTEE ON CONSTITUTIONAL REFORM

Honourable Ian Scott
(Attorney General of Ontario)

- "The proposed interim appointment process, and the provision for more comprehensive Senate reform were included as a result of the recognition by First Ministers of the desire of many Canadians for a body that better represents regional interests in the federal government." (May 4, 1988, p. 53)
- "It would not be in the interest of provincial governments to nominate unqualified persons to the Senate, and the requirement for the participation of both levels of government in the appointment process will ensure quality appointments." (May 4, 1988, p. 54)
- The provision for unanimous federal and provincial approval of amendments respecting the Senate is appropriate. Such changes to the fundamental structure and institutions of federalism without the support of all governments would lack the political legitimacy required of constitutions." (Submission to the Ontario Select Committee, May 4, 1988, p. 56)

Peter Meekison
(Vice-President of the University of Alberta, former Deputy Minister of the Alberta Department of Federal and Intergovernmental Affairs)

- "Senate reform will be difficult under any formula. In my opinion, the change to the amending formula does not alter that basic fact. It has been suggested that neither Quebec nor Ontario will give up their clout in any reformed Senate. If that is the case, then the fifty percent test found in the existing formula would not be fulfilled even though eight (not seven) provinces could favour a change."
- "I also find it difficult to accept the fact that any federal government would, itself, recommend to Parliament reform of the Senate over the strong objections of either Quebec or Ontario."
(February 1988)

HIGHLIGHTS OF COMMITTEE REPORTS

SPECIAL JOINT COMMITTEE OF THE HOUSE AND SENATE

- "The Joint Committee is of the view that the proposed changes to the amending formula do not establish any new principles. They carry forward principles established in 1982 in a way that is consistent with both the "equality of the provinces" and a recognition of the stake that each and every province has in the basic elements of the Canadian federation." (p. 127)
- "The Joint Committee is of the view that:
 - (a) there is widespread support for an elected Senate that would more equally represent the provinces of Canada and that could then justify the effective use of its powers;
 - (b) meaningful Senate reform must be pursued by the First Ministers on a priority basis in order to justify their claim that the temporary appointment procedure in the Meech Lake Accord will indeed be temporary;
 - (c) the "temporary" appointment procedure does not prevent Senate reform and, in fact, may enhance the possibilities of reform through the new options available to the provinces such as direct popular election of provincial nominees; and
 - (d) the veto powers now available to all provinces will assure provinces such as Alberta, who feel strongly about Senate reform, that they cannot be forced to accept a Senate reform package that does not live up to their expectations." (p. 95)

DEBATES IN THE HOUSE OF COMMONS/PROVINCIAL LEGISLATIVE
ASSEMBLIES

HOUSE OF COMMONS - FIRST DEBATE

The Right Honourable Brian Mulroney
(Prime Minister)

- "... without the participation of Quebec, reform of the Senate was both legally and politically impossible. You can talk about it all you want, but it could not have taken place in the absence of Quebec." (House of Commons Debates, October 21, 1987, 10247)

SASKATCHEWAN

Honourable Grant Devine
(Premier of Saskatchewan)

- "The present agreement amending the Canadian constitution is ample proof that the unanimity is indeed achievable, even where very complex issues are involved. The same point could also be made in relation to the reform of the Senate of Canada. The difficulty of arriving at a consensus about what the form the future Senate should take should not be minimized. At the same time, however, there already exists significant consensus that the role the Senate is presently playing is unsatisfactory, and that ways must be found to make it more suited for the modern Canadian federal system. I'm quite confident that, given this firm basis on which to work, intensive discussions between the federal government and provinces will be open and constructive and will indeed lead to an agreement on how this institution - the Senate - can be reformed to meet contemporary needs and circumstances of the day." (Saskatchewan Hansard, July 9, 1987, 1051)

ALBERTA

Honourable Don Getty
(Premier of Alberta)

- "For 100 years people have been talking about Senate reform in Canada, but until this government went through this process, there was never a provision that there would be Senate reform. We have it as the number one item for constitutional reform, and it's guaranteed in the Constitution." (Alberta Hansard, November 25, 1987, 2002)

ACADEMIC COMMENT

Tom Courchene

(Robarts Professor of Canadian Studies, York University)

- "Meech Lake has broken the log-jam and has ushered in the first significant step in decades toward meaningful Senate reform." (Robarts Centre for Canadian Studies, Working Paper Series 87-F02, p. 33)

Peter Hogg

(Professor of Law, Osgoode Hall Law School, York University)

- "...there is force to the argument that a change to a Triple E Senate, or some variant of that, is too important to be thrust upon an unwilling province. On that view, unanimity is a wise safeguard." (Peter Hogg, Meech Lake Constitutional Accord, Carswell, 1988, p.20)

RECENT POLITICAL COMMENT

Honourable Lowell Murray

(Leader of the Government in the Senate and Minister of State for Federal-Provincial Relations)

- "For its part, the Government of Canada is convinced that the health and effectiveness of our national institutions, acting on behalf of all Canadians, require that the Senate become elected. I do not underestimate the complexity and the difficulty of achieving this and related reform to the Senate. Some would say that the Meech Lake Accord will make it more difficult. I would simply reply that without Quebec's return to the constitutional table, Senate reform is impossible." (National Conference on Senate Reform, University of Alberta, May 5, 1988)
- "As a result of the Meech Lake amendments, it will become impossible to impose a Senate reform proposal on Alberta that was unacceptable to the Alberta Legislative Assembly -- as it was possible, in 1981, to impose limits on the legislative jurisdiction of Quebec's national assembly without its consent.

Alberta has long been a champion of the equality of the provinces. But the 1982 Constitution Act provided that major changes to the Senate could be made with the consent of seven or more provinces representing at least 50 per cent of the population -- without the ability to opt out as a defensive mechanism, as is the case under the general amending formula. Consequently Ontario and Quebec, if they acted together, could have vetoed a Senate reform proposal supported by all other provinces. But no other two provinces - for example, Alberta and British Columbia - had that capacity to block Senate amendments they found unacceptable." (ibid)

Honourable Jim Horsman

(Alberta Attorney General and Minister of Federal and Intergovernmental Affairs)

- "Without Meech lake and the requirement in the Meech Lake accord for Senate reform, we'd never get it in this country". (Calgary Herald, May 10, 1988)

- "Alberta supported the Accord for two fundamental reasons. First, proclamation of the Accord will end the constitutional isolation of Québec. Secondly, the Accord guarantees a process that will lead to meaningful Senate reform. This is the first time a national commitment to reform our upper house has been achieved."

"Alberta agreed to the unanimity requirement because we acknowledge that there are certain provisions within the Constitution that are so fundamental that their alteration must only proceed under the approval of all the partners of Confederation."

"I know that there are those who believe that Senate reform should be accomplished before Meech Lake is approved. While I acknowledge their anxieties, I feel that their view is unrealistic and fails to recognize how important Québec's return to our Confederation is to gaining further constitutional change."

"Meech Lake does not inhibit Senate reform. On the contrary, it establishes a process under which reform can be achieved, and it ensures that this reform must be satisfactory to all governments.".
(National Conference on Senate Reform, University of Alberta, May 5, 1988)

FISHERIES

TESTIMONY OF WITNESSES: PUBLIC HEARINGS

SPECIAL JOINT COMMITTEE OF THE HOUSE AND SENATE

Honourable Robert Stanfield

(Former Premier of Nova Scotia and former Leader of the Opposition)

- "I do not think that agreeing to discuss fisheries in the next constitutional conference is anything more than an act of courtesy on the part of the Government of Canada toward Newfoundland... I do not think it commits anybody to anything."
(5:114)
- "I do not see that it involves any commitment on the part of the Government of Canada or presumably the provinces, which have presumably agreed to that going on the agenda. I am sure the Government of Nova Scotia does not envisage the Government of Canada losing jurisdiction or giving up jurisdiction over fisheries. I think it is just a plan of procedure." (5:115)

Peter Meekison

(Vice-President of the University of Alberta, former Deputy Minister of the Alberta Department of Federal and Intergovernmental Relations)

- "[Constitutional conferences] have proven themselves to be a valuable mechanism for exchanging views in our increasingly interdependent federal system.
- The provision does not guarantee or require change but merely provides a vehicle for examining issues.
- It is inconceivable that a major amendment would be seriously considered without first having some kind of intergovernmental discussion. It should be remembered that whatever is agreed to at any conference must still be debated and approved by Parliament and the appropriate number of provincial legislatures." (10:45-46)

HIGHLIGHTS OF COMMITTEE REPORTS

SPECIAL JOINT COMMITTEE OF THE HOUSE AND SENATE

- "Simply to place an issue on the agenda is not tantamount to having it actually discussed, nor does it presuppose reaching any agreement. The agenda item is not "jurisdiction over fisheries", but rather "roles and responsibilities with regard to fisheries" which is a much larger and wider subject that could result in federal-provincial agreements or other cooperative arrangements benefiting all fishermen without disadvantaging any of them." (p. 135)

DEBATES IN HOUSE OF COMMONS/PROVINCIAL LEGISLATIVE
ASSEMBLIES

NOVA SCOTIA

Honourable John Buchanan
(Premier of Nova Scotia)

- "[Critics] apparently fail or choose not to realize that fisheries have always been an agenda item or a discussion topic during most constitutional conferences". (Legislative Assembly Debates, March 1, 1988, p. 181)

RECENT POLITICAL COMMENT

Senator Lowell Murray

(Minister of State for Federal-Provincial Relations)

- "It has been alleged that Newfoundland could well be able to encourage other provinces with little interest in the outcome to agree to a change of jurisdiction [over the fisheries] to benefit Newfoundland. This assumes that provinces 'with little or no interest' in the outcome would willingly gang up with other provinces to deprive one or two particular provinces of access to key resources. To put it mildly, this is highly unlikely - not least because provinces are aware that the tables could turn during future constitutional discussions on other issues.

Furthermore, it is completely unreasonable to presume that the federal government would agree to a proposal favoured by seven provinces - with 50 per cent of the population - but fiercely opposed by one or two provinces that would be directly affected and would suffer hardship." (Senate Debates, March 31, 1988, 3053)

ABORIGINAL PEOPLES

TESTIMONY OF WITNESSES: PUBLIC HEARINGS

SPECIAL JOINT COMMITTEE OF THE HOUSE AND SENATE

Honourable Gordon Robertson

(Former Secretary to the federal Cabinet)

- "I do not think anybody is really to be reproached for the lack of success. I think on the question of aboriginal government an attempt was being made to achieve something very, very difficult, very new in a very short period.
- I think it was a mistake to think that anything as difficult as aboriginal self-government could be worked out in four years or something of that sort. Looking ahead to further constitutional change, I do not see any reason why one cannot work at it and hope for success." (3:90)

Peter Leslie

(Director, Institute of Intergovernmental Relations,
Queen's University)

- "The other reason for going ahead with the accord, or for wanting to have an accord, is that it will enable us to get on with other constitutional issues; it will enable us to proceed with further constitutional development." (4:98)

Honourable Robert Stanfield

(Former Premier of Nova Scotia and former Leader of the Opposition)

- "As far as the aboriginal rights are concerned, bringing Quebec in...at least facilitates the possibility of meaningful discussions with regard to aboriginal rights and the place of aboriginal people. It is a substantial step forward in that way. I find it difficult to image how we can get very far dealing with such a fundamental question without Quebec participating in the Constitution. And this will make it possible for that to happen." (5:109)

William Lederman

(Professor Emeritus, Faculty of Law, Queen's University)

- "Now, if we get Quebec's wholehearted collaboration in future constitutional changes, then we can start doing some very important things. I would doubt, for example, if there is going to be any progress in aboriginal rights until Quebec is a wholehearted participant in the requisite future conferences." (7:30)

Zebedee Nungak

(Co-Chairman of the Inuit Committee on National Issues)

- "The positive changes take time to incubate; and they do not incubate in a void. We need an ongoing forum; ongoing contact ... We need some kind of a process, maybe not as big or big-time as we had it in the five-year constitutional process, but something in place that will ensure that our hopes and our wishes are conveyed to the government and the government can inquire, pick our brains, and try to come up with the basics that will eventually be the basis for an aboriginal Meech Lake." (3:40)

Louis "Smokey" Bruyère

(President of the Native Council of Canada)

- "After several months of quiet diplomacy, the aboriginal peoples of Canada are going to be issuing their own five point demand to the First Ministers and to the country." (12:103-104)
- "We have looked at and are presently looking at ... something similar to what took place in the Meech Lake Accord." (12:111)
- "The process, as in terms of the Meech Lake Accord, might have been a good one and it might be something that could be looked at. We have suggested in a number of discussions with the Prime Minister's Office that there might be a possible way of setting up a one-person commission to do the same sort of thing as Senator Murray was doing prior to the Meech Lake Accord in terms of dealing with the Quebec five demands and in dealing with the other provinces." (12:112)

ONTARIO SELECT COMMITTEE ON CONSTITUTIONAL REFORM

Dr. David Cameron

(Deputy Minister, Intergovernmental Affairs, Ontario)

- "I think the unanimity clearly is a more demanding amending formula than the general amending formula. On the other hand, the involvement of Quebec at the constitutional table in the future, which has not been the case in the past, is a potential for reform and change that was not there before. I think some people look back at the aboriginal discussions and say, 'Had we had Meech beforehand, it might have been a good deal easier to have approached an accommodation with the aboriginal community.'" (February 2, 1988)

Group of Eleven Academics*

- "By clearing the decks of previous conflicts, the Accord opens the door for progress on a new set of issues such as aboriginal rights." (Submission to the Select Committee, p.5)

* Keith Banting, Queen's; Thomas J. Courchene, York; William R. Lederman, Queen's; Peter M. Leslie, Queen's; Kenneth McRoberts, York; John Meisel, Queen's; Peter Russell, University of Toronto; Richard Simeon, Queen's; Donald Smiley, York; Hugh G. Thorburn, Queen's; and Ronald Watts, Queen's

HIGHLIGHTS OF COMMITTEE REPORTS

SPECIAL JOINT COMMITTEE OF THE HOUSE AND SENATE

- "We do not believe, however, that rejection of the 1987 Constitutional Accord is the way to address [the aboriginal peoples'] concerns." (p. 146)
- "The suggestion that the Constitutional Conferences on Aboriginal Affairs did not succeed because of a "failure of political will" on the part of First Ministers is, we believe, an unfair oversimplification." (p. 108)
- "There is no comparison, in our view, between the task set for themselves by Canada's aboriginal peoples - namely, creation of a third order of government - and constitutional recognition in an interpretation clause of Quebec's "distinct society". Among other differences, Quebec already has its governmental powers and jurisdiction spelled out in the Constitution Act, 1867." (p. 109)
- "Aboriginal representatives told the Joint Committee that they too would be satisfied with a simple straightforward one-line statement in the Constitution recognizing aboriginal self-government. Some of them suggested that this would be no more difficult than to add an interpretative clause recognizing the "distinct society" of Quebec. This assumes that an interpretation clause performs the same function in the Constitution as a clause creating a new level of government. This is incorrect." (p. 109)
- "There is a broad consensus that Quebec's five conditions are realistic and achievable and that the time is ripe for decision. There is no comparable consensus at this time on aboriginal self-government or other constitutional matters directly affecting aboriginal people." (p. 112)
- "We have recommended a series of measures to push ahead the process of constitutional change in matters that directly affect [aboriginal peoples.]" (p. 146)... These measures should galvanize the aboriginal constitutional agenda back into action and we urge the participants to make a thoughtful and realistic reassessment, in light of the experience of the past four

conferences, of what is likely to be acceptable to the other participants. Without significant moderation of some of the positions taken on all sides of the bargaining table we are deeply concerned that the legitimate objectives of aboriginal self-government may never be achieved." (p. 147)

DEBATES IN THE HOUSE OF COMMONS/PROVINCIAL LEGISLATIVE
ASSEMBLIES

HOUSE OF COMMONS - FIRST DEBATE

The Right Honourable Brian Mulroney
(Prime Minister)

- "On the question of aboriginal rights we came very, very close to achieving a resolution of the principal issue at the 1985 First Ministers' Conference. It is my view that we would have come much closer, given the track record of succeeding Quebec Governments on this very sensitive issue, indeed we probably would have succeeded in 1985, had Quebec been part of the process at that time. Justice would have been achieved for our aboriginal peoples, at least in a substantial measure, two years ago. We must now, in my judgment, manage this issue with great care, as we have done with the Quebec Round." (House of Commons Debates, October 21, 1987, 10247)

HOUSE OF COMMONS - SECOND DEBATE

The Right Honourable Brian Mulroney
(Prime Minister)

- "Since 1982, constitutional reform has been blocked. Four conferences on aboriginal rights for example have ended in failure, in some measure because Quebec declined to participate actively. With the return of Quebec, we've increased the chances of success at a future conference dealing with the outstanding issue of aboriginal self-rule. Surely, if there is one group of Canadians which needs and deserves that degree of justice and equality of opportunity it is our aboriginal peoples. The Meech Lake Accord makes justice much more possible for each and every member of our aboriginal communities across Canada." (House of Commons Debates, June 14, 1988, 16407).

DEBATES IN THE HOUSE OF COMMONS/PROVINCIAL LEGISLATIVE ASSEMBLIES

ONTARIO

Honourable Ian Scott

(Attorney-General of Ontario)

- "Since 1981 Quebec did not participate in the constitutional renewal process... I believe if Quebec had seen fit to participate in that process, we might have had a different result. One of the good things about Meech Lake is that Quebec is now participating in the constitutional process as a result of this renewal." (Ontario Hansard, November 25, 1987, 544)

Bob Rae

(Leader of the Ontario Opposition)

- "I say it is a national shame that we do not yet have a Constitution which recognizes the distinct rights of our aboriginal people, their rights to self-government. Our working out as a nation our relationship with our native people is at the very top, in my judgement, of our unfinished business as a nation, but I must also say I do not think it would be fair to suggest that anything in this document takes away from that objective and goal. I am also enough of a realist to know these discussions have been ongoing for some time and have not produced a useful or possible result yet. I, for one, hope very much that the inclusion of Quebec at the table will make this more possible than it has been up until now.

I do want to emphasize that nothing in this document either adds to or takes away from that process." (Ontario Hansard, June 29, 1988, 4852)

RECENT POLITICAL COMMENT

Senator Lowell Murray

(Minister of State for Federal-Provincial Relations)

- "[Aboriginal] leaders have requested that aboriginal issues be placed on the agenda of future constitutional conferences provided for the Meech Lake Accord ... However, I am not sure that it is wise or necessary to institute a new consultation mechanism of the same type with fixed deadlines ... In fact, it could even prove harmful if we compel ourselves to negotiate without a reasonable chance to come up with an agreement." (Senate Debates, March 31, 1988, 3053)

- "Will someone tell me how the interests of minority language groups are served by the constitutional isolation of Quebec? How are the interests of our aboriginal peoples served by the isolation of Quebec? The truth of the matter is that the absence of Quebec from the table is inimical to the interests of minority language groups, and it is hardly less inimical to the interests of aboriginal peoples, as we found in the constitutional conferences of 1985 and 1987, when the absence of Quebec was one of the factors that led to our failure to achieve a consensus and to achieve an amendment of self- government for our aboriginal peoples." (Senate Debates, April 21, 1988, 3213)

RECENT ACADEMIC COMMENT

Nicole Duplé

(Professor, Faculty of Law, Laval University)

- "I would like to emphasize that the fundamental characteristic of Canada identified in paragraph 1 a) of article 2 and from which flows the distinctiveness of Quebec is one characteristic; it allows for others such as our multicultural heritage (article 27 of the Charter). In my opinion, the fact that aboriginal people have been exempted from the effects of article 2 (see article 16 of the 1987 Constitutional amendment) is noteworthy not because their co-existence with non-aboriginals is not a characteristic of Canada but because article 2 was uniquely intended to govern the relationship between the two linguistic and cultural groups." (Translation - Paper presented at a symposium of the Constitutional and Civil Rights Section of the Canadian Bar Association - Quebec Division - on the Meech Lake Accord, November 14, 1987, p. 9)

THE PROCESS

TESTIMONY OF WITNESSES: PUBLIC HEARINGS

SPECIAL JOINT COMMITTEE OF THE HOUSE AND SENATE

Honourable Gordon Robertson

(Former Secretary to the federal Cabinet)

- "I think we see in the Constitutional Accord of 1987 the result of 19 years of discussion and consideration. I think we would not have had this accord if it had been tried in 1971 or 1978 or even 1982. I think it took a long time to condition the thinking and it also took what Senator Murray referred to as a "window of opportunity" to achieve it." (3:90)

Richard Simeon

(Director, School of Public Administration, Queen's University)

- "The accord was not conceived and born suddenly at Meech Lake. The elements included in it have been the subject of extensive debate for many years. The present government campaigned in part on issues of this sort. The opposition parties have been on record with resolutions reflecting much the same principles and the Quebec proposals, to which it responds, have been published for a considerable period of time. This was not just suddenly conceived like that." (5:74)

Peter Meekison

(Vice-President of the University of Alberta, former Deputy Minister of the Alberta Department of Federal and Intergovernmental Affairs)

- "It is somewhat disconcerting to hear critics now say they were unaware of the negotiations or Quebec's five conditions. I for one did not subscribe to the argument of unseemly haste.
- The issues and questions have been on the constitutional agenda for a long time." (10:41)

Honourable J.W. Pickersgill

(Former federal Cabinet Minister, Secretary to the PM and Secretary to the Cabinet)

- "All these things have been discussed for 60 years, ever since we got recognition of our sovereignty in the conference of 1926. This is really the final stage, if it is the final stage, as I hope it will be, to complete that task." (10:124)

ONTARIO SELECT COMMITTEE ON CONSTITUTIONAL REFORM

Peter Hogg

(Professor of Law, Osgoode Hall Law School, York University)

- "I think my reaction is exactly the same as yours, that when you trace each of the specifics of the Meech Lake Accord back through the last 20 odd years of constitutional discussions, I think you can find the origins typically in matters that were either agreeable to the government of Prime Minister Trudeau or had actually been the subject of agreement at the Victoria Charter, for example. There is really nothing in there that is new or unexpected, it seems to me."
(February 2, 1988)

Group of Eleven Academics*

- "The Accord has been criticized as an illegitimate exercise of power by eleven individuals meeting in secret. However, we believe that the procedures followed are consistent with the tenets of representative democracy: in 1984 the federal Progressive-Conservative Party campaigned on the promise to reconcile Quebec to the Canadian constitutional order; the Quebec proposals were made public in May 1986; the federal Liberal and New Democratic parties debated the issue at national conventions and passed resolutions fully consistent with the principles in the Accord; and the House of Commons has now endorsed the Accord with all-party support. As a result of the 1982 Constitution Act, the process of ratification by the vote of 11 legislatures is more open than any previous constitutional reform, including that of 1982 itself. The conduct of open hearings in Ontario and at least two other provinces is further testimony to the openness of the process.
(Submission to the Select Committee, p. 5)

* Keith Banting, Queen's; Thomas J. Courchene, York; William R. Lederman, Queen's; Peter M. Leslie, Queen's; Kenneth McRoberts, York; John Meisel, Queen's; Peter Russell, University of Toronto; Richard Simeon, Queen's; Donald Smiley, York; Hugh G. Thorburn, Queen's; and Ronald Watts, Queen's

Honourable J.W. Pickersgill

(Former federal Cabinet Minister, Secretary to the PM and Secretary to the Cabinet)

- "[The] accord was accepted unanimously by all the 11 governments that share the sovereignty of Canada. When people talk about its being done secretly or in a corner, who is better qualified to speak for the people of Canada than the heads of the governments responsible to the elected representatives of the people?" (March 24, 1988)

Richard Simeon

(Director, School of Public Administration, Queen's University)

- "First of all, the elements in Meech Lake have really been the central elements in Canadian constitutional debates since at least the early 1960s ... All of them have been extensively debated, have been part of formal constitutional proposals both by the provinces and by federal governments in the past."

"... the fundamental elements of the Meech Lake Accord were clearly set out by the current Prime Minister in the 1984 election campaign and, indeed, formed a major part of his appeal for national reconciliation."

"... Quebec itself had publicly stated its conditions for constitutional settlement a year before the Meech Lake Accord, and we all had a year to think about that list of five conditions. A few months later, the Premiers meeting together had pledged to address that agenda in this round of discussions."

"... both major federal opposition parties had debated the issues around Meech Lake within their own party forums ... Both the federal opposition parties had endorsed resolutions well before Meech Lake which were generally consistent with the way in which it went." (March 22, 1988)

- "I would say that the procedures for passing the Accord do meet the test of consistency with the established constitutional procedures, are consistent with the norms of a federal system and are consistent with representative, parliamentary democracy as we have developed it in Canada."
(March 22, 1988)
- "It seems to me that executive federalism and representative, parliamentary government may be flawed in important respects, but it is hard now to imagine how one would create an alternative process which would command broad assent and which could bring together and make the kind of accommodation which is essential here. It seems to me we should not reject the Accord on these grounds, but we should in the future seek to respond in as many ways as we can to some of those new concerns. I think that rather than reject the Meech Lake outcome on this ground, we should turn our attention to the process in the future."
(March 22, 1988)

Peter Meekison

(Vice-President of the University of Alberta, former Deputy Minister of the Alberta Department of Federal and Intergovernmental Affairs)

- "[All] five items had previously been the subject of constitutional discussion, ranging from a limited review of 'distinct society' to an exhaustive analysis of the amending formula. In this respect there was nothing new or surprising about the five subjects"

"It is somewhat disconcerting to hear critics say today they were unaware of the negotiations or Quebec's five conditions. ... I for one do not subscribe to the argument of unseemly haste. The issues and questions had been on the constitutional agenda for a long time. What caught people by surprise was the fact that an accord had been reached." (February 1988, pp 2-3)

Honourable Ian Scott
(Attorney General of Ontario)

- "A reference to the Court of Appeal of the Meech Lake Accord does not appear to be appropriate. It would involve asking the court a question which the court would, in all likelihood, be unable to answer. Further, it involves an abdication by the political branches of their responsibility for evaluating constitutional amendments and determining whether a constitutional amendment ought to be enacted." (Submission to the Ontario Select Committee, May 4, 1988, p. 98)
- "The procedures being followed for passing the Accord are consistent with established constitutional procedures. They fall within the practices of executive federalism and are consistent with the tradition of a representative parliamentary government." (ibid, p. 80)

HIGHLIGHTS OF COMMITTEE REPORTS

SPECIAL JOINT COMMITTEE OF THE HOUSE AND SENATE

- "As a number of witnesses indicated, the Accord was not the result of two all-night bargaining sessions. Its origins extend at least to the 'unfinished business' of the patriation of the Constitution in 1982 and the issues it deals with have been the subject of discussion, debate, consultation and preparation for even longer." (p. 131)
- "We do not ... accept the view put forward by some witnesses that the procedure leading to the 1987 Constitutional Accord was flawed and should be rejected on that account. The procedure was appropriate to the particular exigencies of its special facts." (p. 143)
- "It is clear that Parliament and the legislatures are too large and too cumbersome to participate in negotiations directly. But they can, and should, react and respond to proposals, both before and after First Ministers have had their say." (p. 133)
- "We have recommended establishing a Standing Joint Committee of the Senate and the House of Commons on Constitutional Reform. We would hope that, as part of the ratification process of the 1987 Accord, such a Joint Committee will be established on a permanent basis and that its ongoing proceedings and deliberations will play a significant role in the determination of the agenda for future First Ministers' Conferences on the Constitution." (pp. 135-36)

DEBATES IN HOUSE OF COMMONS/PROVINCIAL LEGISLATIVE ASSEMBLIES

HOUSE OF COMMONS - SECOND DEBATE

The Right Honourable Brian Mulroney
(Prime Minister)

- "... the discussions that led to the Meech Lake Constitutional Accord culminate over 20 years of constitutional debate. The Accord builds on the constitutional discussions of 1968 and 1971. It builds on the constitutional exercise of 1975 and 1976, and on Bill C-60 in 1978. It builds on the negotiations that followed the referendum in 1980, as well as the patriation exercise in 1980 and 1981." (House of Commons Debates, June 14, 1988, 16407)

Pauline Jewett
(New Democratic Party Member: New Westminster-Coquitlam)

- "We think, however, particularly in the light of some of the events that have taken place in the last month since we discussed Meech Lake, that a really very significant achievement was brought about. True, it was 11 men sitting around into late hours, but they did represent all the political Parties. They did discuss and debate the issues, although in private, on the basis of about 60 years of discussion of these matters, and intense discussion on the Quebec agenda for the previous two years." (House of Commons Debates, May 19, 1988, 15650)
- "The last time we had men sitting around doing something for us was the famous kitchen cabinet back in November of 1981, when three men arranged things to almost completely forget women and

native people. That was about the worst example in my memory of people sitting around in a closed environment, a kitchen, in that case. If ever there needed to be a woman in the kitchen, it was certainly then. They came up with some pretty shocking anomalies and forgetfulness. I do not think that has been the case this time, with the exception of some proposals on which we have made our amendments and which I have gone over today." (ibid, 15650)

- "We should also look at the fact that not only did the Premiers represent all the provinces and all political Parties, but also that the agreement that they reached at Meech Lake and then subsequently in finer print at the Langevin Block, was only the fourth time in Canadian history that unanimity among the partners has been reached on a constitutional amendment. Getting agreement on important constitutional change in Canada is about as rare as Haley's Comet." (ibid, 15651)

NOVA SCOTIA

Honourable John Buchanan
(Premier of Nova Scotia)

- "There are those who say it was a 19 hour event ... years and years of discussion and meetings led up to the Meech Lake Accord, and the subsequent Ottawa meetings where the Meech Lake Accord was finally initialled and completed." (Assembly Debates, May 25, 1988, p. 4171)

RECENT POLITICAL COMMENT

Senator Lowell Murray

(Minister of State for Federal-Provincial Relations)

- "In terms of process ... First Ministers are proceeding according to the amending formula adopted in the Constitution Act, 1982. This is why I find so misleading the views of present proponents of amendments to the Accord to refer to the 1981-82 exercise as a precedent for last-minute, over-the-telephone amendments. Let us not forget that we are now operating under far different ground rules than we were in 1981-82, when a single phone call between governments would suffice to achieve amendments, since no formal amending formula was in place and only the Joint Address of the Senate and the House of Commons was ultimately required to secure amendments to the Constitution. Provincial legislative assemblies were not then required to give their constitutional approval to such amendments, but since 1982, under the amending formula then adopted, 11 legislative assemblies now play a very special role. Since the House of Commons, by an overwhelming majority and with the support of all three party leaders, and the Legislative Assemblies of Quebec, Saskatchewan and Alberta have already adopted the Accord, any amendment at this stage would require not only the unanimous consent of First Ministers but also new resolutions by the legislative bodies that have already adopted the measure." (Senate Debates, April 18, 1988, 3078)

RECENT ACADEMIC COMMENT

Tom Courchene

(Robarts Professor of Canadian Studies, York University)

- "Professor Deborah Coyne of the University of Toronto described the process as follows: 'Eleven men sat around the table trading legislative, judicial and executive powers as if engaged in a gentlemanly game of poker' (cited in the Joint Committee Report, 1987, p.130). A somewhat flippant, but nonetheless pertinent, reply is that this aspect of the 1987 process may well be preferable to November, 1981, process where ten men sat around the table trading legislative, judicial and executive powers while the eleventh was engaged in a gentlemanly game of poker in Hull!" (Robarts Centre for Canadian Studies, Working Paper Series, 87-F02, p. 58)
- "It should be added that one of the difficulties with the Meech Lake process was that very few Canadians thought that a deal would materialize and, hence, very little in the way of public debate occurred prior to the Accord." (ibid, p. 59)

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